IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MOBILE TELECOMMUNICATIONS TECHNOLOGIES, LLC	)(	CIVIL DOCKET NO. 2:13-CV-948-JRG-RSP
VS.	)(	MARSHALL, TEXAS
HTC AMERICA, INC.	)(	SEPTEMBER 19, 2016 1:23 P.M.

TRIAL TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Counsel, this morning in chambers, there was a discussion that -- between both sides there had been a mutual agreement reached with regard to adding an item to the list of pre-admitted exhibits. If that's still the case, I need announcement in the record as to specifically what you are proposing.

MR. SCARDINO: Sure, Your Honor. Daniel Scardino for the Plaintiff. This is Exhibit --

THE COURT: Go -- go to the podium, please, Counsel.

MR. SCARDINO: Of course.

The exhibit is PX-46 on the last admitted exhibit list the Plaintiff filed with the Court. It's an exhibit called the SkyTel High-Level Description -- System Description, I believe, and we conferred with opposing counsel, and there was an agreement reached about using it today, as long as they can use it for cross-examination.

THE COURT: All right. Is that Defendant's agreement, Mr. Selinger?

MR. SELINGER: Yes, it is, Your Honor.

THE COURT: All right. Though the time for admission -- pre-admission of exhibits is long past, based on

the parties' mutual agreement, I will add PX-46 to the list of pre-admitted exhibits.

MR. SCARDINO: Thank you.

Your Honor, I apologize. There -- apparently, there is one more than we need to announce to the Court that is by agreement. It's PX-47, 47, that is the Samsung settlement agreement, as I understand it. And the parties have agreed that both sides wanted to use that, so they've agreed to add that to the exhibit list as well.

MR. GILLAM: That's correct, Your Honor.

THE COURT: So both PX-46 and PX-47 are newly added pre-admitted exhibits by mutual agreement of both parties, correct?

MR. GILLAM: Yes, Your Honor.

MR. SCARDINO: Yes, Your Honor.

THE COURT: All right. I'll ask the courtroom deputy to make a note on the list of pre-admitted exhibits adding PX-46 and 47.

All right. Counsel, is there anything further before I bring in the jury?

MR. DACUS: Nothing from the Plaintiff, Your Honor.

MR. GILLAM: Not from the Defense, Your Honor.

THE COURT: All right. If you'd bring in the jury, please, Mr. Floyd.

COURT SECURITY OFFICER: Yes, sir.

All rise for the jury.

(Jury in.)

THE COURT: Welcome back from lunch, ladies and gentlemen. Please have a seat.

Thank you for being on time, ladies and gentlemen. I have some preliminary instructions that I want to give you before we start with opening statements from the lawyers and then get on to the evidence in the case.

You've now been sworn as jurors in this case. And as the jury, you are the sole judges of the facts. As such, you will decide and determine all of the facts in this case.

As the judge, I'll give you instructions on the law, rule on questions of the law, procedure, and evidence, deal with any issues regarding the decorum of the courtroom, and I'll oversee the flow of the evidence during the trial itself.

At the end of the evidence, I'll give you detailed instructions on the law to apply in deciding this case, and I'll then give you a list of questions that you are then to answer. This list of questions is called the verdict form. Your answers to those questions will need to be unanimous, and those answers will constitute the jury's verdict in this case.

Now, I want to briefly tell you what this case is about. This case involves a dispute regarding a single certain United States patent. I know that you saw the patent video this morning, but I want to give you some instructions on the

record about a patent and how one is obtained.

Patents are either granted or denied by the United States Patent and Trademark Office. You'll often hear this agency of the government simply referred to as the PTO.

A valid United States patent gives the patentholder the right for up to 20 years from the date the patent application is filed to prevent others from making, using, offering to sell, or selling the patented invention within the United States or importing it into the United States without the patentholder's permission.

A patent is a form of property called intellectual property. And like other forms of property, a patent can be bought and it can be sold.

A violation of the patentholder's rights is called infringement. A patentholder may try to enforce a patent against persons it believes to be infringers by filing a lawsuit in federal court, and that's what we have in this case.

The process of obtaining a patent is called patent prosecution. To obtain a patent, one must first file an application with the United States Patent and Trademark Office, the PTO. The PTO is an agency of the United States Government, and it employs trained examiners who review patent applications.

The application includes what is called a specification. The specification contains a written

description of the claimed invention telling what the invention is, how it works, how to make it, and how to use it.

The specification concludes or ends with certain -- one or more certain numbered sentences. These numbered sentences are called the patent claims. When a patent is granted by the PTO, the claims define the boundaries of its protection and give notice to the public of those boundaries.

Patent claims may exist in two forms referred to as independent claims and dependent claims.

An independent claim does not refer to any other claim in the patent. It is independent. Therefore, it's not necessary to look at any other claim to determine what an independent claim covers.

On the other hand, a dependent claim refers to at least one other claim in the patent. A dependent claim includes each of the limitations in the other claim or claims to which it refers or to which we sometimes say it depends, as well as those additional limitations or elements recited within the dependent claim itself.

Therefore, to determine what a dependent claim covers, it's necessary to look at both the dependent claim itself, as well as the independent claim or claims from which it refers, or we sometimes say from which it depends.

The claim -- the claim of the -- the claims of the patent-in-suit use the word "comprising." Comprising means

including or containing. A claim that includes the word "comprising" is not limited to the methods or devices having only the elements recited in the claim but also cover methods or devices that add additional elements.

Take, for example, a claim that covers a table. If the claim recites a table comprising a tabletop, legs, and glue, the claim will cover any table that contains these structures, even if the table also contains other structures, such as a leaf to go in the top of the table or wheels to go on the ends of the legs.

Now, that's a simple example using the word "comprising" and what it means. In other words, it can have other features in addition to those that are covered by the patent.

Now, after the applicant files the application with the PTO, an examiner is assigned, and that examiner reviews the application to determine whether or not the claims are patentable -- that is, whether or not the claims are appropriate for patent protection and whether or not the specification adequately describes the claimed invention.

In examining the patent application, the examiner reviews certain information about the state of the technology at the time the application is filed.

The PTO searches for and reviews this type of information that is publicly available or that is -- or that

that is submitted by the applicant. This type of information is called prior art. The examiner reviews this prior art to determine whether or not the invention in the application is truly an advance over the state of the art at the time.

Prior art is defined by law, and I'll give you specific instructions at a later time as to what constitutes prior art. However, in general, prior art includes information that demonstrates the state of the technology that existed before the claimed invention was made or before the application for a patent was filed.

A patent contains a list of certain prior art that the examiner has considered. The items on this list are referred to as the cited references.

Now, after the prior art search and the examination of the application, the examiner informs the applicant in writing of what the examiner has found and whether the examiner considers any claim to be patentable, in which case it would be allowed. This writing from the examiner is called an office action.

Now, if the examiner rejects the claims, the applicant has an opportunity to respond to the examiner to try to persuade the examiner to allow the claims. The applicant also has a chance to amend or change the claims or add new claims.

This process may go back and forth between the

examiner and the applicant for some time until the examiner is satisfied that the application meets the requirements for a patent. And in that case, the application issues as a United States patent, or in the alternative, if the examiner ultimately concludes that the application should be rejected, then no patent is issued.

Sometimes patents are issued after appeals within the Patent and Trademark Office or to a court. The papers granted during these communications back and forth between the examiner and the applicant are called the prosecution history.

The fact that the PTO grants a patent does not necessarily mean that any invention claimed in the patent, in fact, deserves the protection of a patent. While an issued United States patent is presumed to be valid under the law, a person accused of infringement has the right to argue here in federal court that the claimed invention in a patent is invalid.

It's your job as the jury to consider the evidence presented by the parties and to determine independently and for yourselves whether or not the Defendant has proven that the patent-in-suit is invalid.

To help you follow the evidence, I'll now give you a brief summary of the positions of the parties.

As you know, the party who brings the lawsuit is called the Plaintiff. In this case, the Plaintiff is Mobile

Telecommunications Technologies LLC, who I will refer to throughout the trial as either the Plaintiff or the short form name, MTel.

A party against whom a lawsuit is brought is called the Defendant. In this case, the Defendant is HTC America, Inc., who I'll refer to either as the Defendant or simply HTC.

As I told you during jury selection, this is a case involving allegations of patent infringement.

There is one United States patent at issue in this case; that is, United States Patent No. 5,754,946. Patents are commonly known by their last three digits, so with regard to this patent in this case, you will hear it referred to regularly as simply the '946 patent. You may hear it called the '946 patent.

The '946 patent is referred to as the patent-in-suit. It may sometimes be called the asserted patent, and it generally -- generally relates to cell phone features or to the functionality of smartphones and tablets.

Now, you will have, ladies and gentlemen, a complete copy of the '946 patent in your juror notebooks, which are going to be passed out to you in just a few minutes.

The Plaintiff in this case, MTel, contends that the Defendant in this case, HTC, directly, indirectly, and willfully infringes certain claims of the patent-in-suit by importing, making, and selling products that include their

patented technology.

MTel also contends that it is entitled to damages for this alleged infringement.

The Defendant, HTC, denies that it's infringing the patent-in-suit and contends that the asserted claims of the patent-in-suit are invalid as either being anticipated by what is called the prior art or as being obvious in light of the prior art.

I'll give you more detailed instructions regarding the meaning of these terms in a few minutes.

HTC also contends that MTel is not entitled to any damages.

Now, I know, ladies and gentlemen, that there are a lot of new words and concepts that are being thrown at you today. I'm going to define a lot of these words and concepts for you as we go through these instructions.

The attorneys are going to discuss a lot of these in their opening statements. The witnesses are going to help you with their testimony to understand these terms and concepts, so please do not feel overwhelmed at this stage. I promise you, as we go through the trial, this will all come together.

Your job in this case is to decide whether the asserted claims of the one patent-in-suit have been infringed and whether the asserted claims of the patent-in-suit are invalid.

If you decide that any claim of the patent-in-suit has been infringed by HTC and is not invalid, you'll then need to decide whether HTC's infringement has been willful and what amount of money damages are to be awarded to MTel from HTC to compensate for such infringement.

As I've told you, my job is to address questions regarding the law, handle rulings on evidence and procedure, and oversee the conduct of the trial.

In determining the law, it is specifically my job to determine the meanings of any claim language from within the asserted patent that needs interpretation. I've already determined the meaning of certain claim language in the patent-in-suit, and you must accept the meanings that I give you and use those meanings when you decide whether any particular claim has or has not been infringed and whether or not any claim is or is not invalid.

You'll be given a document in a few moments that reflects these meanings that the Court is giving you.

For any claim term for which I have not provided you with a definition, you should apply the plain and ordinary meaning.

If you've been provided with a definition from the Court, however, you are to apply my definition to those terms throughout the case.

However, my interpretation of the language of the

claims should not be taken by you as an indication that I have a personal opinion or any opinion at all regarding the issues of infringement and invalidity. Those, ladies and gentlemen, are your issues to decide alone.

I'll provide you with more detailed instructions on the meaning of the claims before you retire to deliberate and reach your verdict.

In deciding the issues that are before you, though, you'll be asked to consider specific legal rules, and I'll give you an overview of those rules now. And then at the conclusion of the case, I'll give you much more detailed instructions.

The first issue that you'll be asked to decide is whether --

(Cell phone ringing.)

THE COURT: Mr. Floyd, I'm going to ask you to take that cell phone from Mr. Gillam and take it outside the courtroom, and I'll see whether he gets it back at a later date or not.

COURT SECURITY OFFICER: Yes, sir.

THE COURT: It's the Court's rule that disruptions like that are not permitted.

I told the ladies and gentlemen of the jury, they cannot have their cell phones in the courtroom. The lawyers have electronic devices to help them with their handling of the case, but they're under strict instructions not to let them

cause any disruptions and keep them on silent.

So because that disrupted the court, we're going to confiscate that cell phone. If you'll take that out and return.

All right. I'll continue with my preliminary instructions to the jury.

The first issue you're going to be asked to decide is whether HTC has infringed any of the asserted claims in the patent-in-suit.

Infringement, ladies and gentlemen, is assessed on a claim-by-claim basis, and MTel must show you by a preponderance of the evidence that a claim has been infringed. Therefore, there may be infringement of one claim, but there may not be infringement of any other claim.

There are also a few different ways that a patent can be infringed. I'll explain the requirement for those types of infringement in detail at the conclusion of the case. But in general, HTC may infringe the asserted claims of the patent-in-suit by making, using, selling, or offering for sale in the United States or importing into the United States a product meeting all the requirements of a claim from the asserted patent.

I'll provide you with more detailed instructions on infringement at the conclusion of the case.

Now, the second issue that you'll be asked to decide

is whether the asserted patent is invalid. Invalidity is a defense to infringement.

Therefore, even though the United States Patent and Trademark Office has allowed the asserted claims and even though a patent issued by the United States is presumed to be valid, you, the jury, must decide whether those asserted claims are invalid after hearing all the evidence presented in this case.

You may find a patent claim to be invalid for a number of reasons, including because the -- because it claims subject matter that is not new or is obvious.

For a patent claim to be invalid because it is not new, HTC must show by clear and convincing evidence that all the elements of a claim are sufficiently described in a single previous printed publication or patent. We call these items prior art. If a claim is not new, it is said to be anticipated by the prior art.

Another way that a claim can be found to be invalid is that it may have been obvious. Even though a claim is not anticipated because every element of a claim is not shown or sufficiently described in a single piece of prior art, the claim may still be invalid if it would have been obvious to a person of ordinary skill in the field of the technology of the patent at the relevant time.

You'll need to consider a number of questions in

deciding whether the invention claimed in the asserted patent is obvious. I'll provide you with more detailed instructions on these at the conclusion of the trial.

If you decide that any of claims of the patent-in-suit have been infringed and are not invalid, that is, the presumption of validity has survived, then you'll need to decide whether HTC's infringement has been willful.

You will also need to decide what amount of money damages are to be awarded to MTel to compensate it for that infringement.

A damage award in a patent case must be adequate to compensate the patentholder for the infringement, and in no event may the damage award be less than what a patentholder would have received had it been paid a reasonable royalty for the use of its patent.

However, the damages you award in this case, if any, are meant to compensate the patentholder and not to punish the Defendant. You may not include in any damages award an additional amount as a fine or a penalty above what is necessary to fully -- to fully compensate the patent owner for the infringement.

Also, damages may not be speculative, and MTel must prove the damages in this case for HTC's alleged infringement by a preponderance of the evidence.

I'll give you more detailed instructions on the

calculation of damages regarding the alleged infringement of the Defendant regarding the patent-in-suit at the conclusion of the trial, including giving you more specific instructions with regard to the calculation of a reasonable royalty.

However, the fact that I'm instructing you now about damages is not meant to indicate that MTel is entitled to recover damages.

Also, ladies and gentlemen, throughout this trial, you're going to be hearing from a number of witnesses, and I want you to keep an open mind while you're listening to all the evidence and not decide any facts in this case until you have heard all of the evidence from all of the witnesses.

While a witness is testifying, it's important for you to remember that you will have to decide the degree of credibility and believability to allocate to the witnesses and the testimony that they give.

So while each of the witnesses in this case are testifying, you should be asking yourselves things like this: Does the witness impress you as being truthful? Does he or she have a reason not to tell the truth?

Does he or she have any personal interest in the outcome of the case? Does the witness seem to have a good memory? Did he or she have an opportunity and ability to observe accurately the things they testified about?

Did the witness appear to understand the questions

clearly and answer them directly? And of course, does the witness's testimony differ from the testimony of any other witness, and if it does differ, how does it differ?

These are some of the kinds of things that you should be thinking about while you're listening to each of the witnesses testify in this case.

Also, I want to talk to you briefly about expert witnesses. When knowledge of a technical subject may be helpful to the jury, a person with special training and experience in that particular field -- we refer to them as an expert witness -- is permitted to testify to you, the jury, about his or her opinions on those technical matters.

However, you're not required to accept an expert's or any other witness's opinion. It's up to you to decide whether you believe an expert witness, or any other witness for that matter, and whether you believe what they're telling you is correct or incorrect and whether or not you want to believe what they say.

Now, I anticipate that there will be expert witnesses testifying in support of each side in this case. But when an expert witness testifies, you will have to listen to their qualifications, and when they give an opinion, you'll have -- and explain the basis for it, you'll have to evaluate what they've said and whether or not you believe it and to what degree, if any, that you want to give it weight.

Remember, ladies and gentlemen, judging and evaluating the credibility and believability of each and every witness is a very important part of your job as jurors.

Now, during the trial, it's possible there will be testimony -- testimony from one or more witnesses that will be presented to you through what's called a deposition.

In trials such as this, it's difficult, if not impossible, to get every witness in -- in court, in person at the same time. So lawyers from each side, before the trial, take the depositions of the witnesses.

In a deposition, the witness is present, a court reporter is present, and the witness is sworn in and placed under oath just as if they were personally in court. Then lawyers for each of the parties ask the witness questions, and those questions and the witness's answers are recorded.

Portions of those recordings -- most of the time they are video recordings. Portions of those recordings of those questions and answers may be played back to you as a part of this trial so you can see the witness and hear their testimony, even though they're not personally or physically present in court.

That deposition testimony is entitled to the same consideration, insofar as possible, and is to be judged as to the credibility, weight, and otherwise considered by the jury in the same way as if the witness had been present and giving

their testimony in person from the witness stand in open court.

Now, during the trial, ladies and gentlemen, it is possible that the lawyers in this case will make certain objections. And when they do, I'll make rulings on those objections. It's the duty of an attorney for each side to object when the other side offers testimony or other evidence that the attorney believes is not proper under the orders and rules of the Court.

Upon allowing the testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated otherwise, indicate an opinion as to the weight or effect of that evidence.

Excuse me.

As I've stated before, you, the jury, are the sole judges of the credibility and believability of all the witnesses and the weight and to what effect to give to all of the testimony and evidence in this case.

Now, I want to compliment the parties in this case at this point because prior to today, there has been a lot of work put in by both sides and the Court in going through the admissibility of exhibits that are going to be shown to you through the trial.

Arguments regarding the admissibility of exhibits have already been presented and already been considered by the Court prior to today -- to today, and I've ruled on those

objections and those exhibits, and, therefore, we have a list of pre-admitted exhibits that can be shown to you by either party throughout the trial without having to go through their presentation, any objections, any arguments, and any rulings.

You may not appreciate it, but I can promise you, this process has saved you a lot of time during the trial so you will not have to listen to all that.

And the parties on both sides have worked diligently with the Court to raise those issues and have them argued and disposed of prior to today. So I compliment them for their work in advance of the trial.

However, that being done, it's still possible that objections will arise during the trial. If I sustain an objection to a question addressed to a witness, then you, the jury, must disregard the question entirely, and you may make no inference or -- or speculate as to what the witness would have said if the Court had permitted them to answer the question.

However, if I overrule an objection to a question addressed to a witness, then you should consider the question and the answer just as if no objection had been made.

You should know, ladies and gentlemen, that the law of the United States permits a judge, such as myself, in federal court to comment to the jury on the evidence in a case, but those comments by the judge are not evidence and are only an expression of the judge's opinion, and they may be

disregarded by the jury, because I remind you, it is the jury that is the sole judges of the facts and the credibility of the witnesses and the weight to be given to the evidence.

Even though the law permits me to comment on the evidence in this case, as I indicated to you early -- earlier today in jury selection, I intend to try very hard not to comment on any of the evidence or any of the witnesses throughout the trial.

As you can see, the court reporter in front of me, Ms. Holmes, is taking down everything that's said in the courtroom. She has since we convened this morning, and she will throughout the trial.

However, the written transcript of everything that's said in court is prepared in case there is an appeal of this trial to an appellate court. That transcript will not be available for your use in deliberating on your verdict or deciding the questions in this case. So you're going to have to rely on your memories of the evidence in this case.

In a moment, each of you are going to be given a juror notebook. In the back of those notebooks, you'll find a legal pad with blank pages where you can take notes throughout the trial. You'll also find a pen in these notebooks that you can use for that purpose.

It's up to each of you to decide whether or not you want to take notes during the course of the trial, and if you

do, how detailed you want those notes to be. But if you take notes, remember, those notes are for your own personal use. You're going to have to rely on your memory of the evidence, which is why you should pay close attention throughout the trial to each and every witness.

You should not abandon your own recollection because some other juror's notes indicate something differently. Your notes are to refresh your recollection, and that's the only reason you should be keeping them.

Now, I'm going to ask our Court Security Officer at this time to pass out the juror notebooks to each of the members of the jury.

In these notebooks, ladies and gentlemen, you'll see that you each have a copy of the single asserted patent in this case, the '946 patent.

You'll also find that you have what we call witness pages in this notebook. For each witness that we expect may testify, you'll find that there's a page with a head and shoulder's photograph of the witness at the top of that page, their name underneath their photograph, and additional lines below that that you can also place notes on, if you wish to.

Also, you'll find, as I mentioned, a legal pad in there that you can take notes on, as well as a pen. You'll also find in there a list of the claim terms that the Court has already construed and defined, as well as the corresponding

definitions that the Court has given you to use in regard to the trial.

Whenever you leave each day to go home, you should make sure that those notebooks are left on the table in the jury room. They should either be on the table in the jury room, or they should be in your possession in the courtroom as you have them now.

There may be times, ladies and gentlemen, when we take a brief recess, and I will tell you simply leave your closed notebooks in your chairs. And you can do that. But unless I tell you otherwise, they either need to be in your personal possession or they need to be on the table in the jury room.

Now, we're going to have opening statements in just a few minutes, but I want to give you -- before that, I want to give you a brief roadmap of how the trial is going to be structured before we get on to those opening statements.

After the opening statements are complete, the Plaintiff, MTel, will present its evidence in support of its contentions that the asserted claims of the patent-in-suit have been and continue to be infringed by the Defendant, HTC.

To prove infringement of any claim, MTel must persuade you that it is more likely true than not true that HTC has infringed the asserted claims by a preponderance of the evidence.

Now, after the Plaintiff, MTel, has presented its case and rests, then the Defendant, HTC, will present its evidence, its evidence that the asserted claims of the patents-in-suit -- or the patent-in-suit is invalid.

To prove invalidity of any claim, the Defendant, HTC, must persuade you by clear and convincing evidence that the claim is invalid. And in addition to presenting its evidence of invalidity, HTC will put on evidence responding to MTel's proof regarding infringement and damages.

Then HTC, the Defendant, will rest its case. After the Defendant has rested, the Plaintiff, MTel, will be given an opportunity to put on additional evidence responding to HTC's evidence that the claims of the patent-in-suit are invalid and to offer any rebuttal evidence regarding infringement and damages. This is referred to as the Plaintiff's rebuttal case.

After the Plaintiff puts on and presents its rebuttal case, then all of the evidence will have been presented to you, the jury. And after all of the evidence has been presented to the jury, I will then provide you with my final instructions on the law to be applied in this case.

Those final instructions from the judge to the jury are often called the Court's final jury charge. The lawyers -- after I give the charge, after I give you my final instructions, the lawyers will then present their closing arguments. After you've heard closing arguments from the

attorneys, then you will retire to deliberate in the jury room and reach your verdict.

I remind you of my instruction that I've given you several times and will continue to give you throughout the trial that you are not to discuss the case among yourselves or with anyone else.

Only after you've heard all the evidence and I've instructed you to retire to the jury room and deliberate on your verdict, then and only then should you discuss the case and the evidence in this case among yourselves. And as I've mentioned, at that point, it becomes your duty to discuss the evidence and the case among yourselves.

I remind you, ladies and gentlemen, because of the nature of this case, that you should leave your cell phones outside the courtroom. They are not evidence in this case, and whether they are an HTC phone, an Apple phone, a cell -- cell -- Samsung -- I'm sorry -- a Samsung phone, or any other phone, they are not evidence in this case and -- and should not be considered by you in any shape, form, or fashion.

I remind you also that the lawyers and the witnesses and the party representatives have been instructed not to talk to you. So during breaks and recesses and coming and going each day, they're not going to engage in conversation with you. Don't hold that against them. They're not being rude. They're simply doing what the Court's instructed them to do.

All right. With those instructions, we're now going to hear opening statements from the parties.

We'll begin with the Plaintiff MTel's opening statement, followed by the opening statement of the Defendant.

The Plaintiff may present its opening statement to the jury at this time.

MR. DACUS: Thank you, Your Honor.

It's my understanding, Your Honor, we have 30 minutes. If the Court will please let me know when I have 5 minutes remaining.

THE COURT: I thought it was 25 minutes, Counsel.

MR. DACUS: 25, okay. Well, if you'll let me know when I have 5 minutes of my 25.

THE COURT: I will let you know when you have 5 minutes of your 25.

MR. DACUS: Thank you, Your Honor.

Good afternoon.

THE COURT: Go ahead.

MR. DACUS: Thank you, Your Honor.

Good afternoon.

Let -- let me start this afternoon exactly where I started this morning, and that is to say, on behalf of myself and on behalf of Mr. Fitton and on behalf of MTel, a very sincere thanks to you. It's one -- it's one thing to say thanks to you when you're going to spend a couple of hours here

in the morning in jury selection, and it's quite a different -- and another thing to say thanks when you're going to spend an entire week here.

As I told you this morning, we would not be here if this case was not important to us. No doubt when you walked through those doors this morning, you, like every other juror, asked why you're here. You knew you were here to be a juror, but you didn't know exactly what the case was about or what your role would be.

You now know enough, based on this morning and what the Court has told you, to know that MTel is the owner of patent 5,754,946, titled Nationwide Communication System. As the Court told you, it relates to the transmission of data wirelessly, including on cell phones.

You also know that at least since late 2008, through the time that the patent expired in May of 2015, HTC has sold over 51 million phones and tablets that use the '946 patent.

And let me -- let me say one other thing about that. There was some issue this morning about how does the fact that they get these phones from their Taiwanese parent affect the issue here.

I believe the Court will instruct you in its final instructions that if you sell or offer for sale an infringing product in the United States, even if you get it from your Taiwanese parent, then you're liable for infringement. And I

believe that's the case here, and that's what the evidence will show.

So the reason we're here, at least from MTel's perspective, is simple. We're here to ask for a jury's help. It's exactly what the video said to you this morning. When you're a patent owner and someone is trespassing on your property, taking your property without paying for it, you come to a United States Federal District Court and you ask a jury two questions.

You ask them, in this case: Does HTC infringe the '946 patent? That means do they use the patent. And then you ask them: If so, what dollar amount should HTC pay for the use of that patent? And that's the short answer to why we're here.

But as in any lawsuit, I think it's important to not only talk about why you're here, but how did we get here? And in this case, I think it's actually more important than in most.

And here's why I say that. I'm going to ask you to step back in time with me. I'm not going to ask you to close your eyes because we're a little bit after lunch and I don't want you to go to sleep, but step back to the early to mid '90s.

Some of you that are my age or older, you can remember that time. You can remember what was going on. Some of you who are a little younger, I'm going to try to describe

it.

So in the early to mid '90s, a lot of people had a little device on their belt or a little patch -- or a pouch on their belt that carried a device called a pager. And that pager had the ability, at least at first, to receive short messages. Very similar to what text messages and emails are today.

There was a group literally four hours east of here down Interstate 20 in Jackson, Mississippi, at a company called MTel. MTel owned what was known as the SkyTel paging business. Some of you who are my vintage and older may remember the old SkyTel pagers. They were literally the preeminent, the best paging network in the country.

Those inventor -- those engineers at MTel literally were some of the best and brightest in the country.

Mr. Bill Hays, are you in here?

Mr. Hays, would you stand up, please?

This is Bill Hays, 74 years young, and inventor of the '946 patent. He's one of those engineers at MTel in Jackson, Mississippi more than two decades ago that had an idea.

Thank you, Mr. Hays.

His idea was this: Look, these pagers, they only receive information, but we think it would be incredibly beneficial and useful if not only did they receive information

but if they could send information.

And in addition, what you may or may not remember is, at that time, a pager was just a regional or local device. In other words, if you were in East Texas, you could send a message. But someone in East Texas couldn't send one to someone in Mississippi or New Mexico.

So these engineers set about to develop the country's first two-way, meaning you could both send and receive, nationwide wireless communication system. And in doing that, as you might imagine, they encountered a lot of problems. Because if there weren't problems, someone would have already done it before.

And examples of the problems they encountered were these: One is, how do we get this information or data communicated through these airwaves?

What you'll come to know through the evidence in this case is that information communicated through the air, which we think is unlimited. The space there is actually not limited. It's communicated along a spectrum, which I think about in simple terms as a pipe, okay? And there's only so much data that can go through this spectrum or pipe.

And Mr. Hays and others, he'll take -- he'll be the very first witness that you'll hear from. He'll take the stand and he'll tell you: Yeah, we had to figure out how to fit this data into these pipes.

They also had to figure out, how do we get this data transmitted quickly? We all know, those of us who use cell phones now, we don't want to wait on the Internet to pull up. We don't want to wait on our texts. We don't want to wait on emails.

So they were trying to figure out: How do we communicate information quickly, efficiently, and without using up all the available capacity?

The truth is, they were very successful in developing that network. In fact, the United States Government granted them what was called a Pioneer Preference. In recognition for the work that those engineers at MTel did, the Federal Communications Commission, which is the arm of the government that controls communications in the United States, granted to them a Pioneer Preference.

Now, there's also another thing that you need to know about what these engineers were doing. They were not only solving the problems of the day, in other words, the problems that they saw immediately that they needed to fix in order to develop this two-way paging system, they were looking into the future, and they were thinking what problems might occur in the future.

And so what did they do with all these solutions to the problems? Well, they committed them to writing. For many of them, they submitted patent applications, and literally

dozens and dozens of patents came from the work of those engineers, including the '946 patent that brings us here today.

And so what you'll see on the screen here is sort of the evolution of those SkyTel pagers. From 1995, a pager that could only receive information to 1997, a pager that could both send and receive information. And then in 2008, of course, an HTC phone that we contend uses the '946 invention.

Let's step forward in our timeline. Remember, we're saying: How did we get here on September 19th, 2016, in this courtroom?

In May of 1998, having had a patent application in its hand for more than a couple of years, the United States Patent and Trademark Office granted the '946 patent.

Now, let's talk about the time period as we walk along our chronology from 1999 to 2007. For those of us who have gray hair like I do, or more, we know in the very late '90s and early 2000s what happened. A device like this came along, a cell phone, right?

And memory that, at first, all we could do on this device was talk. But because we could talk, pagers became not as required.

Now, I'm not talking about the technology that Mr. Hays and his group had developed of how to effectively transmit wireless information, but the pager itself. Rather than needing to send a page to someone to give them a message,

we could simply pick up the phone and call them.

And I tell you that for a reason. In the course of this lawsuit, HTC has said at times: Hey, the value of this SkyTel business decreased over time. It went down over time. And they may try to tell you that in this lawsuit.

But if they do that, I want you to be on high alert, and here's why. I'm not saying that it's a trick, but I'm saying that sometimes you need to be on high alert for what lawyers tell you.

The issue in this lawsuit is not did the value of a paging business go down. We all know it did. The issue is what's the value of that technology in the '946 patent. And that's what you're ultimately going to be asked to decide if you decide they use that invention.

So there's several sales of the SkyTel business which eventually culminate in March of 2008 with a company by the name of Velocita, owned by Mr. Andrew Fitton, buying those SkyTel assets, the SkyTel paging business, the entire business, including the '946 patent.

What happens in 2008 in addition to that purchase? Well, there's something that you see on the screen there. It's called the data explosion. And you're probably saying: Well, what in the world is he talking about there? And that's a legitimate question.

Remember that in late 2007, a company by the name of

Apple did something with these cell phones. Remember we could only talk on them up until 2007, and then in 2007, what happened? All of a sudden, we can communicate by text, email, Internet, and video. All of that is data or information.

And not only was it Apple that came out with a smartphone, but Samsung did, LG did, HTC did. And so now we have millions of people sending data wirelessly through the airwaves.

And so what happens? The engineers at HTC and these other smartphone manufacturers have problems. What are their problems? Well, how do we send all this data and information quickly and efficiently? How do we send it through this limited capacity pipe called spectrum? Do those problems sound familiar?

They were the same problems that Hays and his group had encountered more than two decades before. And how did they resolve those problems? At least HTC solved it by using what is the '946 invention.

And of course, the problem with that is, when you use an invention, you need to pay for it. And that's exactly what brings us here today to this courtroom, September 19th, 2016, is that starting in October of 2008, HTC began using the '946 patent to -- same -- to solve the same kind of problems that Bill Hays and his group had solved in the early '90s. And they did that without ever paying a penny or a dime.

Now, the two questions that you're going to be asked -- that's how we get here. We'll go back to why you're here. What's your role? I think it's important for you to understand what the process is.

The Court's given you some indication of what your role is going to be. You know from the video this morning, you know from what the Court's told you that the claims of the patent, when you -- I'm not asking you to do it now, but when you have time, look at the back of that patent. You will see numbered claims. Each one has a number, one, two, three, four.

Something I didn't know before I started learning patent law, a patent can contain many inventions, indeed most patents do contain many inventions, and indeed this one does.

So there are two inventions, two claims at issue here: Claim 1 and Claim 4. Those are the claims you're going to be looking at. And as the Court already told you, what you're going to do is you're going to look at the claim language and compare it to the product.

Now, I'm certain that before you walked through those doors this morning, you had never conducted an infringement analysis. So I know this is a little foreign to you. What -- so our job as lawyers is to help, is to provide the evidence. I don't get to answer that question. I really wish I did. It would make for a simple process. But you answer the question. Our job as lawyers is to provide the evidence.

So Dr. Paul Prucnal, are you here?

This is Dr. Paul Prucnal. Dr. Paul Prucnal is one of the leading telecommunications experts in the country from Princeton University. When we began to believe --

Thank you, Dr. Prucnal.

-- that HTC was infringing or using our patent, we asked Dr. Prucnal to evaluate that for us. He's going to take the stand, and he's going to walk you through -- what you see on the screen here is Claim 1 of the patent. He's going to walk you through the language and the wording of this claim.

If you try to read it quickly, you're going to say: Whoa. And that's what I said, and I've read it a thousand times. But he'll walk you through step-by-step, and he'll compare the language of that claim to an HTC product and how it works.

So at a very high level -- and I'm quite certain I'm going to do an injustice to Dr. Prucnal because I won't be technically correct here -- I want to preview for you how these HTC phones work, and then he'll match it up to the claim language.

So you see here what we have is an example of Bob sending an email message on his phone. The message is up above. It says: Here is the menu. That's the text he typed. And then he attaches the actual document. He attaches the actual menu. He sends the message to Alice.

And what does Alice receive on her HTC phone? She receives the message that says: To Alice, from Bob. She receives the text. Here's the menu. But then she receives a symbol -- let's just called it a symbol. It's a button that she can click or select or tap if she actually wants to download the menu. She doesn't receive the menu itself.

And if she so chooses, if she taps or clicks or selects on that button, then it sends a message back to the communications network and asks for the menu, at which time the menu is actually transmitted to her, and that's what you see on her phone.

Dr. Prucnal and others will tell you about all the advantages and why HTC and others have that feature in their phone. But he'll walk you through Claim 1 and show you how each and every one of these elements of Claim 1 is used by HTC.

Those green checkmarks are simply something you can do as you go along. When he checks off an element, you can decide whether or not you think he's proven to you that, in fact, that element is in the HTC phone.

If you decide that it is, you're going to be asked to decide what amount of money should HTC pay for the use of the patent.

The Judge has already told you that there's some specific law here as to what they're required to pay. They're required to pay a minimum, in no event less than a reasonable

royalty.

In other words, they're required to pay a minimum of a reasonable royalty, which begs the question, what in the world is a reasonable royalty and how do I calculate it?

Walt Bratic, are you in the courtroom?

This is Mr. Walt Bratic. Mr. Bratic is a CPA down in Houston. Mr. Bratic has devoted his entire professional life, more than 30 years, to valuing patents and to evaluating damages in patent cases like this. We've asked him, as part of this case and his work, to evaluate the value and the damages that MTel would be entitled to if, in fact, there was infringement.

He's going to tell you that what the law requires -- and I think the Judge will tell you this before you retire to deliberate -- is you're required to conduct a hypothetical negotiation.

And you're probably saying what in the world does that mean? It's simple. You're supposed to assume that HTC had done the right thing in 2008, and they had come to a table and sat down with MTel and said: Hey, we want to and need to use your '946 patent. What can we pay you per phone to compensate you for that? That's what a hypothetical negotiation is.

As part of that hypothetical negotiation, the law says you need to consider many factors, one of which is what's

the value or benefit created by the '946 patent?

Mr. Bratic is going to walk you through, just like Mr. Prucnal is going to walk you through, more detail than you've ever wanted, but the kind of detail that you need in order to make an informed decision on these questions.

Mr. Bratic is going to -- this is just an example of one of the schedules or charts he's going to show you, and he's going to tell you that for each phone, the '946 patent creates, at a minimum, $7.59 of value or benefit per phone.

And then he's going to tell you that you're supposed to decide in this hypothetical negotiation how much of that would these parties have agreed should go to the patent owner? How much of that $7.59 of value should be paid to MTel for the use of the patent.

And after he considers all the factors, he'll tell you what the royalty rate is. So if you look on the slide that's on the screen, you see where it says: Royalty rate 97 cents.

And that's what he'll say. Of that $7.59 of value per phone that's created every time these folks use it on 51,000,000 phones, he believes MTel should have been compensated or paid 97 cents.

And, of course, then it becomes just a matter of simple math, 97 cents times the 51.4 million phones that they sold in the United States before the patent expired.

Let -- let me say one thing about the patent expiration. That's something else that HTC said to you this morning. And I want to make sure we're clear on it.

We don't -- we don't seek any -- MTel doesn't seek any compensation beyond the date that the patent expired. When you're a patent owner, you make a bargain and a deal with the Patent Office.

The deal is, if you will disclose your patent to the public, your invention to the public so that they can use it in the future, for the first 20 years, you have the sole or exclusive right to use it.

Beyond those 20 years, everyone can use it for free. HTC can -- from May 2015 forward, they can use the '946 invention for free. That's the bargain that we, as the patent owner, made with the Patent Office. And we don't attempt in any way to renege on that.

But the other part of that bargain is, if someone uses your patent before the expiration of the patent, they need to pay a fair and reasonable value for the use of that patent.

Now, let me talk about another topic that the Court mentioned to you: Invalidity. In the course of this lawsuit, HTC, like many corporations, has sort of had a laundry list of excuses.

The first excuse was: We don't use the patent.

The second excuse was: Even if we use it, we don't

think it's worth much money.

The third excuse has been: Well, even if those two things are true, then we don't think your patent is valid.

And I don't know exactly what they're going to say about why the patent is invalid. They've said a lot of things, but I don't know exactly what they're going to say to you.

THE COURT: Five minutes remaining.

MR. DACUS: Thank you, Your Honor.

But I want you to remember a couple of things about this issue. One is they're going to get to stand up here in a minute and speak to you. I'm not going to get a chance to respond. The way we will respond is whatever they say the reason is for the patent to be invalid, we'll put on an expert, Dr. --

Dr. Jay Kesan, will you stand up?

This is Dr. Jay Kesan, again, one of the leading telecommunications experts in the country. And Dr. Kesan will testify as to why the United States Patent and Trademark Office got it right, why, after looking at this patent for a couple of years and issuing the patent, it was absolutely, and still is, a valid patent.

Let me say another thing about invalidity, and that's something we talked about this morning and the Court's told you. There's a presumption that the patent is valid if it's issued by the United States Patent and Trademark Office. And

that, of course, makes sense. If the experts at the Patent Office have reviewed it and issued the patent, there should be that presumption.

So in order to overcome that, they have to prove by clear and convincing evidence that, in fact, this patent was valid. I don't think the evidence will support that, but I want you to keep that in mind.

Finally, before I sit down, I told you there's a long laundry list of excuses that they provided. There's another one. They say -- HTC says: Well, even if we use this patent, even if it's valid, even if it's worth a bunch of money, we think we have a license. We think we have permission to use it.

You remember from the video this morning that if you pay money, you can actually acquire a license. You can acquire the right.

Here's what I'll say about that, again, I don't know what they're going to say because they've said many things during the course of the lawsuit, but I know this: They're never going to be able to show you any agreement or document where MTel, the patent owner, is a party to that agreement and HTC is a party to the agreement, and the agreement says you, HTC, have the right to sell 51 million phones. You won't find an agreement that says they have the right to sell one phone.

If they say what they've said in the course of the

lawsuit, it will be: Well, there's these other agreements over here with Verizon and other people that we think we should share the benefit of.

If we go down that road -- and I don't know if we will -- again, we'll put on evidence, and it will be detailed evidence. You'll need to get your pencils out and take notes as to exactly why there is no license and there is no permission.

I'm going to sit down now. I won't have a chance to speak with you again until we have closing arguments. Our job over the course of the next four days or so will be to present the evidence to you so that can you make an informed decision.

We very much look forward to that opportunity, and I very much look forward to the opportunity at the conclusion of that evidence to talk with you about -- about it and what it shows.

Thank you.

Thank you, Your Honor.

THE COURT: All right. That completes the Plaintiff's opening statement.

The Defendant may now present its opening statement to the jury.

Would you like a warning on your time, Mr. Selinger.

MR. SELINGER: Yes, Your Honor. Could I get five minutes and one minute?

THE COURT: Yes, sir, you may.

MR. SELINGER: Thank you.

THE COURT: Proceed when you're ready.

MR. SELINGER: I am ready.

May it please the Court.

Ladies and gentlemen of the jury, Mr. Gillam, Ms. O'Brien, and I want to add our thanks for your service here today and this week. We understand it really is an imposition on you. But your commitment to the rule of law allows us to have our client exercise its right, its constitutional right, to a trial by jury. So thank you very much.

Mr. Gillam and I are proud to represent HTC America. You have heard that this case involves -- there we go. You have heard that the case involves an expired patent. And -- and the two sides now agree that it does. There's -- there's still a dispute, and that's why we're here.

Now, not surprisingly, this case is about technical details that are important to the disagreement we are asking you to decide. So thank you in advance for paying attention to those technical details.

But before we go into -- into the details, let me make two introductions. First, since everyone else has done so, let me briefly say, I am Jerry Selinger. My wife and I moved to Dallas in 1979. I've practiced law there ever since. I have two grown children. And I have to say -- and I've got a

young granddaughter.

Let me also introduce HTC America, which -- which you've heard a little bit about. HTC America has its headquarters in Seattle, Washington. About a hundred men and women, including Ms. O'Brien, work in -- in this office building. It's not theirs -- it's not theirs exclusively, but they're there. Another 60 men and women work for HTC America in locations around the United States. Since -- there we go -- since June of 2010, HTC America began selling HTC Corporation products.

Now, you've heard that HTC Corporation is not a Defendant in this case. This case is about HTC America. HTC America's largest customers are companies that you likely have heard about: AT&T, Verizon, Sprint, and T-Mobile.

Now, before June of 2010, HTC Corporation, the Taiwanese company, sold -- sold directly to those customers in the United States. In June of 2010, HTC America began doing that.

Now, you have in front of you Defendant's Exhibit 52. And this is the agreement between HTC America, the company headquartered in Seattle, and HTC Corporation. And you'll see effective June 1st of 2010 between HTC Corporation and HTC America.

You've heard some -- you've heard -- you've heard a bit about MTel -- the MTels, and I want to spend a little bit

of time talking about some of the detail that you will hear over time that we haven't yet gotten to.

There was a company in Jackson, Mississippi, in the 1980s that -- had a one-way pager system, and Motorola supplied the pagers and equipment for that company. In the early '90s, this Mississippi company decided that it was going to enter the two-way pager business. And in September of 1995, it began nationwide operation of a two-way pager system.

Plaintiff is not that company, even though it has a very similar name. That company's name was Mobile Telecommunications Technologies, Incorporated. The Plaintiff is Mobile Technology Communications Limited.

So how did this company get the '946 patent and its name? Well, let's go back to 1999. In 1999, MCI Corporation bought that company, that MTel with the SkyTel business, for $1.8 billion. That was for the entire nationwide paging business. It was -- it was leases and hardware and software and an operating business, and as we've heard from counsel, dozens and dozens of patents and trademarks and all sorts of intellectual property.

Now, in 2006, after MCI went into bankruptcy, Verizon bought the business out of bankruptcy -- bought the whole business again, the paging business, the assets, the hardware, the software, the offices, and the dozens and dozens of patents that we've heard about.

Now, about a year later, Verizon sold the entire business -- again, the pager business, the hardware, the software, all of the other assets and the dozens and dozens of patents to a company called Bell Industries for $23 million.

As part of that deal -- and there's no -- I don't think there's any dispute, Bell Industries granted back to Verizon a royalty-free perpetual patent license for all of the patents that were being transferred to the new company, to Bell Industries. One of those patents was the '946 patent.

A year later Bell Industries flipped the business. Again, certainly the pager business, as Counsel said, was deteriorating, but there was still hardware and software and a business and dozens and dozens and dozens of patents, one of which was the '946 patent.

Now, in 2008, Mr. Fitton, actually owned Velocita company. It's one of his companies. In 2010, he moved the patents from Velocita to a company he also owned called ST Networks. He moved it a couple of times. It went to North American IP Holdings. And that was the name of the company until shortly before the litigation began.

But rather than filing this lawsuit as North American IP Holdings versus HTC America, Mr. Fitton changed the name to be very similar to the company that had been the Mississippi pager company. Let me be clear, it is not the same company.

Now, let me turn to how the '946 patent came to be.

I mentioned that the Mississippi company, in the early 1990s, decided that it wanted to enter the two-way paging business.

Long before the company had made decisions on the final technical details of the commercial system, it filed a number of patent applications. Two of those applications bear on the issues that you are here to help us decide.

In 1992, the Mississippi MTel filed an application that became what we call the '403 patent, and the '403 patent is -- is the parent of the '946 patent. The '403 patent described automatically eliminating errors before a message was shown on a mobile device to a user.

Now, you won't hear that the MTel inventors actually invented that technology. That was already conventional technology that they had -- they borrowed from somewhere else.

Now -- but it's described in the '403 patent. And what -- and what the '403 patent says is, if a message is not correctly received by the mobile unit, by the pager, the mobile unit would automatically send a message back to the communications network, to the brains, to the network operation center saying: Please resend. And it worked.

Now, Plaintiff is not suing us on the '403 patent. So you're saying: Why am I talking about it? Well, the reason is because, in 1993, the Mississippi MTel filed another application to solve a problem that they believed they might have created by using this automatic error correction in the

previous -- in the 1992 patent application, and it's this later application that became the '946.

And so I've got a timeline here. You know, the -- the -- let's see -- oops. Let's get -- let's get us out of there.

Okay. So the '403 patent -- so the '40 -- anyway, I don't need the timeline for that.

So what happened is the '403 was filed. The next year the application for the '946 was filed. MTel then took years in order to get the patents issued.

Now, the -- so I'm going to get a little technical help while I'm talking. The -- the '92 problem, the automatic error correction, and the -- there we go. Thank you.

The '92 problem, automatic error correction, and -- and the '93 proposed solution, user optional error correction, are described in the '946 patent.

And what the '946 patent says is that the concern was that automatic error correction, while it worked, might consume too much airtime. The pager system, unlike cellular, which is broadband, was narrowband. And that meant that sending correction messages back and forth could clog the system.

So the Mississippi company's patent lawyers spent five years trying to get the Patent Office -- trying to convince the Patent Office to allow a patent on this proposed solution, the user optional switch feature.

Now, the lawyers continued on, even though the commercial network that MTel came out with in September of 1995 used conventional automatic error correction, not the user optional switch feature of the '946 patent.

Now, over time the Patent Office rejected the -- MTel's efforts on five separate occasions, each time because the examiner considered the claims to be obvious and not worthy of a patent. Only after the Mississippi company's lawyers repeatedly moved and narrowed the boundary lines, the claims, did the examiner agree to grant the patent in 1998.

And His Honor mentioned the claims. The claims are the property line. When you move your claims, when you narrow the property, instead of a ranch, you may end up with a lot less. That was the negotiation that took place.

Plaintiff will hear -- we'll have live testimony from -- from one of the named inventors, Mr. Hays. HTC America plans to offer additional testimony from the other surviving inventors, the other five. They won't be here in person, so I will read questions and someone sitting in the witness stand will read back the answers that each of these men previously gave under oath.

Now, I want to quickly walk through some of the details of what the inventors believed might be a solution in 1993. Because the details matter. What -- what I want to tell you, though, before I get into these is that these technical

details going back 23 and 24 years really are important to today's dispute. Otherwise, I wouldn't subject you to it.

Now, let's start with the abstract. This is the -- this is on the first page of the '946 patent. And what it says is the mobile unit includes a switch that allows a user to request the network to retransmit a received message that contains errors.

I also want to go to a paragraph in the '946 patent in -- in the area called background. And the last paragraph in the background describes what -- what it calls a conventional approach, which was this automatic error correction feature and then the problem with that.

It says: This technique ensured that the messages are accurate but consumes a great deal of airtime. And then it would be desirable to reduce the needless transmission of some message blocks.

So that was the problem that the '946 patent sought to solve. And what -- they did it with a button called the request retransmission button. And if you look at the top of the figure, that's the parent, the '403 patent. And if you look at the top right-hand corner -- let me try this again -- you don't see a button. But if you look below, you will see request retransmission button 1622.

Now, I don't mean to say this is a magic button. Their -- they also disclose that there were input switches, but

this was the solution.

Now, the '9 -- okay. So we've talked about property. What we're going to show you is that the MTel patent has a narrow fenced-in property line. HTC America and its smartphones are in a different pasture owned by somebody else, by HTC America.

Now, we've heard about the '946 patent, but we've heard about what it is we're accused of doing. Let's talk about what the '946 patent doesn't disclose. It makes no mention of emails, email servers, attachments, photographs, downloading attachments, touchscreens, or icons.

We have Dr. William Beckmann here today.

Dr. Beckmann, will you please stand briefly?

Dr. Beckmann has a Ph.D. from Cornell. He started his career teaching. He was an adjunct professor in electrical engineering at Rensselaer Polytechnic Institute. He's a member of the Institute of Electrical and Electronics Engineers.

He's got more than 35 years of technical experience in the telecommunications field working some of the most prestigious research facilities and companies in -- in this country, if not the world: Bell Telephone Laboratories, Bell Telephone -- Bell Communications Research, IBM, Ameritech.

And for the past 13 years, he's been the president of his own technical consulting company, Network Computing Associates. Dr. Beckmann works in the industry. Dr. Beckmann

is here to tell us why HTC America does not infringe either of the two claims.

Now, I'm actually going to put the claim up, and please don't let it scare you. As -- as Counsel have said, lawyers read this a lot, and it still makes us nervous.

But what I want to point out to you is -- is right at the top of No. 1, it's about a mobile unit. And it's a mobile unit for transmitting and receiving radio frequency signals to and from a communications network. That's the property line. This is the boundaries defined by the deed.

THE COURT: Five minutes remaining.

MR. SELINGER: Thank you, Your Honor.

Now, we're going to tell you -- we're going to show you that HTC America does not infringe. And for time, I'm going to skip this, but we will come back to it, and we will talk about it.

There are three grounds of invalidity that we're going to show you, and they're no surprise to the other side: Written description, enablement, and obviousness.

The -- the written description is -- is very simple, and that is because the claims got changed so much over the -- over the five years they were in the Patent Office, that they're very different -- what -- what the claims came out, what the patent lawyers were able to get from the Patent Office, very different than what the men invented.

That also gave rise to the second defense, which was lack of enablement. Because of how the claims changed, the patent doesn't have enough information.

We're also going to show you that -- two Motorola patents. And remember, Motorola was supplying pagers. Two Motorola patents that were not before the Patent Office were not -- were not cited by the examiner, invalidate the claims.

We're going to apply the Kane '100 patent to show -- and the level of ordinary skill in the art, the knowledge of skill to invalidate Claim 1. And we're going to combine Kane with another patent called Zabarsky to invalidate the other, the Dependent Claim No. 4.

Now, you met Mr. Bratic. I want to introduce you Mr. Vince Thomas, our damages expert. What you're going to -- what you're going to -- what you've heard a little bit about so far is HTC America sells devices to carriers, the carriers then sell phones to users. There's -- there's an AT&T store here in Marshall. There are a lot of store -- a lot of carriers stores in Harrison County.

The user then buys data -- the data plan from the carrier. If you notice those blue arrows, back and forth, user, carrier. HTC America is not in that loop. HTC America is not part of that negotiation. HTC America gets no money from that. The data plan is selected by the user. The carrier gets the money.

And that's important because Mr. Bratic says HTC America should pay MTel a great deal of money because smartphone owners supposedly save money by not downloading attachments, and those consumer savings somehow became money in HTC America's pockets.

Mr. Bratic's damage theory is unsupported by the evidence. Mr. Thomas will explain why Mr. Bratic used unreliable data, speculative, and unsupported theories.

Now, I mentioned earlier that some of the largest customers of HTC America included Verizon, AT&T, T-Mobile, and Sprint. Three of those four, T-Mobile, Sprint, and AT&T, have already signed documents called patent license and settlement agreements with MTel.

And you have in front of you the T-Mobile agreement. We do have a dispute about whether HTC America is covered within the words, and that will be something for you to decide.

We also have a disagreement about whether that license that Bell Industries granted back to Verizon in 2006 or 2007 is sufficiently broad to cover sales that HTC America made to Verizon. And by the way, if it does, it may well be that MTel is not entitled to recover any damages for any sales before the time MTel actually sued us.

THE COURT: One-minute warning.

MR. SELINGER: Thank you, Your Honor.

You're going to hear Professor David Taylor from SMU

on that. Professor Taylor is teaching today, but he will be here for trial.

You heard briefly about the Pioneer Preference from Mr. Dacus. Three things.

The Pioneer Preference Award had nothing to do with the '946 patent.

Second, at least one other company actually got a Pioneer Preference Award at about the same time for broadband frequencies for cellular.

And then finally, in addition to hearing Professor Taylor, you're going to have a chance to see decisions from the same Federal Communications Commission that awarded the Pioneer Preference to that Mississippi MTel.

Version -- look at the bottom, Verizon owns a controlling 55 percent ownership interest in the joint venture and thus has control of Verizon Wireless.

On behalf of Ms. O'Brien and all of the 160 men and women who work for HTC America, I want to thank you for your attention to detail and for withholding judgment until you've heard from both sides of this case.

Thank you.

THE COURT: All right. Ladies and gentlemen, you've now heard opening statements from both of the parties. At this time, I'm going to ask, if there are persons present in the courtroom who are designated as witnesses and who anticipate

taking the witness stand during the trial, if you would collectively come forward at this time, we'll have the courtroom deputy administer the oath to all of you at once.

If you're a witness in this trial, please come forward.

(Witnesses sworn.)

THE COURT: Thank you. You may return to your seats.

Counsel, does either party wish to invoke the Rule?

MR. GILLAM: Yes, Your Honor. Defendant wishes to invoke the Rule.

THE COURT: All right. Is it Defendant's request that the invocation of the Rule include or exclude experts?

MR. GILLAM: Your Honor, we ask that it exclude experts so that they can remain in the courtroom.

THE COURT: All right. Additionally, Mr. Gillam, you and Mr. Dacus mentioned to me this morning that there might be some agreement between the parties as to other witnesses who would be excluded from the Rule. Is there something you want to present at this time?

MR. GILLAM: Yes, Your Honor.

On behalf of HTC America, we would like to exclude from the Rule Mr. Vince Lam and Mr. Owais Siddiqui, who are both in the courtroom here, in-house counsel for HTCA.

THE COURT: Does Plaintiff have objection to that request?

MR. DACUS: We do not, Your Honor.

THE COURT: Are there additional persons Plaintiff has an agreement with Defendant on to exclude from the Rule?

MR. DACUS: There is, Your Honor. Mr. Mike Carper from MTel, and that's the only one.

THE COURT: All right. Am I correct, counsel, that both Plaintiff and Defendants have agreed that other than invoking the Rule and excluding experts, that Mr. Lam, Mr. Siddiqui, and Mr. Carper would otherwise be excluded from the Rule and permitted to remain in court?

MR. GILLAM: Yes, Your Honor.

MR. DACUS: Yes, Your Honor.

THE COURT: All right. The Rule has been invoked with those clarifications.

If you are a witness in this case and you are not designated corporate representative at the counsel table, you are not a designated expert witness to appear in this case, and you are not Mr. Lam, Mr. Siddiqui, or Mr. Carper, then you should excuse yourselves and remain outside the courtroom until such time as you're called to testify.

So if you're a witness and not one of these specified individuals or an expert witness, you should excuse yourselves -- or a corporate representative.

All right. The Rule has been invoked.

Plaintiff, call your first witness.

MR. SCARDINO: Your Honor, it's Mr. Hays who just walked out of the room. So we'll go get him.

THE COURT: He didn't get far.

(Pause in proceedings.)

THE COURT: If you'll come forward, sir, and have a seat on the witness stand.

MR. SCARDINO: Your Honor, if I may approach, I do have some exhibit binders.

THE COURT: You may approach.

All right. Counsel, you may proceed.

MR. SCARDINO: Thank you, Your Honor.

BILL HAYS, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. SCARDINO:

Q Good afternoon, Mr. Hays.

MR. SCARDINO: For the benefit of the jury, since I haven't introduced myself to them yet, my name is Daniel Scardino. I'm an attorney representing MTel, and I'm from Austin.

Q (By Mr. Scardino) Mr. Hays, can you please introduce yourself to the jury?

A Yes. Good afternoon. My name, of course, is Bill Hays, and I'm here to represent MTel as a witness. And I'm from Jackson, Mississippi, about four hours east of here on Interstate 20. I've lived there for -- since 1975. I'm

married and have three grown children.
Q Did you drive in for the trial, sir?
A Yes. I drove the Interstate from Jackson to here.
Q How long is that drive?
A It's about four hours.
Q Okay. Now, can you tell the jury a little bit about your educational background and your early professional experience?
A Well, I graduated from the University of Virginia with electrical engineering.
Q Tell the jury -- just let me pause right there. Tell the jury what an electrical engineering degree is.
A Well, an electrical engineering degree is -- is a preparation for working in the engineering field involving planning, designing, implementing, testing, all these kind of things that you do when you get out and do things like create networks. So that was the preparation for that.
Q So what did you do after you graduated from the University of Virginia?
A Well, I entered the United States Air Force for four years, stationed at Eglin Air Force Base in Florida. I was a technical officer, engineering officer.
Q And after you left the Air Force, how did you begin your professional career?
A Well, after I left the Air Force, I went to work in -- in Texas -- in Greenville, Texas, which is about 60 miles north of

here. And I worked with LTV Electro Systems, which has got different names now, but that's what it was back then. And it was the electric -- electronic reconnaissance business.

Q So did that involve your electrical engineering degree that you earned in school?

A Oh, yes. It was a -- it was a technical field, and we had lots of innovations to -- to do that work.

Q So we know from the opening statements that at some point in time later, you went to work for a company called MTel. Can you tell the jury how you got involved working for MTel?

A Well, I first moved back to Mississippi. And after that move, I began to become engaged with a company called MCCA, which was the forerunner of MTel.

Q What did MCCA stand for?

A It was Mobile Communications Corporation of America.

Q Okay. And you said it was the forerunner to MTel. Was MTel known by different names over time?

A Well, yes. The MTel name was the parent company, and it had several operating companies, including SkyTel. SkyTel eventually became synonymous with MTel. And finally we just dropped MTel altogether when we talked about it, and SkyTel became the predominant company.

Q So when we're talking today about MTel or MCCA or SkyTel, that's all the same company that -- that you worked for over a period of time?

A Yes, it's -- it's the same company.
Q Is it okay with you if I just refer to -- to that as MTel and we'll use that name to refer to the company that you worked for during the entire period of time you worked there?
A Yes.
Q Okay. So tell us a little bit more about MTel. What kind of company was it? What was the business that -- that it was engaged in?
A Well, eventually, it was a one-way radio paging company. It had operations in several states, but these were all local networks. When I came onboard, I was assigned -- my first task was to work and propose this nationwide paging network.
Q So that was the one-way paging network?
A That was a one-way nationwide paging network.
Q And when was that? When were you working on the one-way paging network?
A When I went to work there, it was in 1982. And by 1987, we had the network up and running. And also during that period, we had to apply and obtain a license from the FCC to operate in that frequency.
Q Okay. Now, why do you have to get a license from the FCC as you were describing?
A Well, radio spectrum is a scarce commodity. It's owned by the people. The government commissions the use of it and the sound of it. So they, of course, were in the driver's seat to

apply for the license and -- and to watch over us as we built the system and operated the system.

Q So is a license kind of like approval from the government?

A The license is a license to operate. So in that sense, it's an approval.

Q Okay. Thank you.

Now, you said the one-way paging network went live in, what, the late '80s?

A 1987 was the date that we built our initial 16 stations, which was part of the license we had.

Q What was your job title at MTel at that time?

A Okay. I started as a manager of special projects by -- by the 1982 -- or 1987 launch. I was vice president of emerging technologies.

Q Okay. Well, let's talk about that. What does "emerging technologies" mean?

A Well, that's a name that we gave in regards to doing things, thinking out of the box, coming up with innovative unique solutions for our company to maintain its competitive lead in the marketplace.

Q So what did you do with those innovative solutions that you came up with at the company?

A We looked at those solutions, and we saw value in the fact that we had created something new and different, so we turned to the patent process to protect those inventions.

Q Okay. And are you, in fact, an inventor on the patents?
A I'm named on several of the patents that were filed. And there were others as well, so I was in a collaborative effort. I was part of the teams that developed these patents, yes.
Q Right. About how many patents are you the inventor on?
A Approximately 20.
Q Okay. And you're one of the inventors on the patent in this case; is that correct?
A Yes.
Q Okay. Well, let's -- first, before we get into some more details about your history with MTel, let's talk about what you're here today to tell the jury.
Do you understand what you're here to talk about today and the information you're -- you're here to give to the jury?
A Well, I understand I'm here to talk about the facts surrounding the development of the patents in -- in the case, the '946 patent, in particular, and to give background and information and basically what we were trying to do, what we were trying to achieve during that time.
Q Do you understand what you're not here to talk about today?
A Well, yeah, I'm not -- I'm not here today to talk about the claims or -- or the legal language involving the patents. I'm not a legal expert, so I don't do that or can't do that.
Q Have you been --

A I'm not a technical expert.
Q I'm sorry. Go ahead.
A And I'm also not a technical expert.
Q Okay. So let's talk about that. You have not been engaged as an expert witness in this case, even though you're the inventor?
A That is correct.
Q Now, why is that?
A Well, because I am an inventor. And to come here as a technical witness, I would have a conflict of interest in the proceedings. So, therefore, I'm not allowed to do that.
Q And why would you have a conflict of interest, as you say?
A Because I have a special interest in the -- in the patent. I -- since I was one of the named inventors, I'm certainly enthusiastic about the work that was done. And I don't want that to cloud judgment, and so that would be -- that would be the reason.
Q So you're not here today to tell the jury about the issues that were mentioned in opening, infringement, validity, what the claims mean, that kind of stuff?
A That's correct.
Q Okay. Let's talk a little bit about the -- your history with the company and the environment that you were in when these technologies were developed.
Going back in time, tell the jury what your role was after

the one-way network was launched kind of leading up into the 1990s. Let's cover that time period.

A Okay. After we had launched the one-way network in '87, we began to look to new arrivings. And our chief executive officer, John Palmer, was very visionary, and he wanted us to build a two-way nationwide network paging network. That had never been done before.

And so we set about doing that. And that involved doing proposed rule-making and participating in that exercise to present our -- our proposed solution for that program.

Q Who did you present that proposed solution to?

A It was to the FCC in response to their -- their document that came out called the proposed rule-making Narrowband Radio Personal Communications Services.

Q So FCC, just so -- make sure we're all following the acronyms because I know sometimes technical folks can throw out acronyms. That's the Federal Communications Commission?

A That's correct. It's Federal Communications Commission.

Q And that's who you were mentioning earlier licensing the spectrum?

A They were the licensing entity, right.

Q Now, let's talk about the licenses of those proposals to the FCC. Can you give us a -- some time frame? When did -- when did that occur?

A Well, it occurred, of course, after the -- after the

launch of one-way, so about 19- -- let's see -- 1989 or so. We were busily working on a proposed solution for that and running tests. And we did a -- work and achieved what they call a Pioneer's Preference for -- for doing this license.

In other words, the Pioneer Preference holder would be granted a license at the end of this if he -- if he had that -- that grant. So our company was the only one that received the Pioneer's Preference grant.

Q So let's bring up one of the slides from the opening presentation that the jury saw.

MR. SCARDINO: It's Slide No. 9 from the opening slide deck. Can we bring that up, please?

There we go.

Q (By Mr. Scardino) So you saw this slide during opening, sir?

A Yes.

Q Okay. And this is some language from the Pioneer Preference grant.

Do you remember this?

A Yes.

Q Okay. And it says here, the underlined portion -- and I'll just read it -- Under the Pioneer's Preference rules, a necessary condition for the grant of a preference was that the applicant demonstrate that it had developed the capabilities or possibilities of a new service --

THE COURT: Slow down, Counsel.

MR. SCARDINO: I'm sorry, Your Honor. Thank you.

THE COURT: You're reading awfully fast.

MR. SCARDINO: I'm sorry.

Q (By Mr. Scardino) -- Demonstrate that it had developed the capabilities or possibilities of a new service or technology.

Is that why MTel received the Pioneer Preference.

A That's a really good statement because that's exactly what we did, yes.

Q Okay. Now, tell us some more about the development of -- of the two-way network. Did you do it all yourself?

A Oh, no. It was a collaborative effort.

Q And how did it come about?

A We approached it by finding an off-site place to do our work. Our chief -- I mentioned John Palmer -- had a lake house. And we'd go out there, and several of us would go there with chalkboards and slides and view graphs and everything else and things to record and document solutions to the problems that we saw would exist in a -- in a two-way network.

So as a result of that effort, we had enough information before us to realize we could actually build this network and make it work.

Q And we saw that you got the Pioneer Preference.

MR. SCARDINO: Let's pull up another demonstrative. This is No. 3.

And if you can go to the --

Q (By Mr. Scardino) So this is a Federal Communications Commission record. And you see there it talks about Narrowband Personal Communications Service, memorandum opinion, and order.

Do you see that, Mr. Hays?

A Yes, I see that.

Q So tell the jury a little bit about that. You mentioned this term before, "Narrowband Personal Communications Services." What -- orient us to that term.

A Well, the FCC wanted to allocate some special -- it would be a nationwide service. It would provide a variety of services within that resource. This is sort of like a green approach to like radio communications.

Like -- like when I stay in the hotel, they said, if you want -- if you want us to wash your towels, you know, we'll do it; but if you -- if you don't want us to wash them, you know, throw them on the floor, and we'll wash them for you (sic).

We were all encouraged to serve. We may think we have plenty of them, but over time we found out these are scarce. And so these techniques we developed would be applied to anything, whether it's broadband or narrowband, to conserve spectrum, which is very important.

MR. SCARDINO: Okay. Now, let's turn back to that demonstrative. And there's a page that we've highlighted there. Can we get it up? It's not a --

Your Honor, may I approach to grab a binder, and then I'll --

THE COURT: You may.

MR. SCARDINO: Okay. Are you able to pull it up? It's Page 7.

I apologize for the technical difficulties.

Q (By Mr. Scardino) So, again, we'll get there, but this is the -- maybe I should just -- oh, here we go.

So this is the same document, the memorandum and order from the FCC. And what we've got highlighted on the screen here is a statement that the FCC made about MTel's Pioneer Preference Award.

Can you read that, sir, please?

A This is MTel's Pioneer's Preference.

MTel was awarded a Pioneer's Preference for having developed and demonstrated the feasibility of significant innovations that will permit delivery of existing and new advanced paging and messaging services in a spectrum-efficient manner.

Q So this says new advanced paging and -- and messaging services. Can you help us understand what that means?

A What they're trying to emphasize is they didn't want to have a rollout of something that was -- that was existing and commonplace. They wanted this thing to advance beyond where we were, including nationwide coverage, including providing

innovative services like stock paging and just messaging to people, two-way messaging among people --

Q Okay.

A -- all kinds of things that were new.

Q So moving beyond what you were doing with the one-way paging --

A Moving beyond.

Q -- would that be fair?

Okay. Let's -- let's talk about this last group of words, "spectrum-efficient manner." Help the jury with what spectrum-efficient means for you at -- what it meant for you back at MTel.

A Right. Well, these -- these channels we got from the FCC, the frequencies we get, the spectrum we get are kind of like the interstate highways, you know.

So when I go back to Jackson, I'm acutely aware of the fact that I'm glad those -- those roads are open. They're four-lane roads. But when they're under construction, they're narrow, right, and -- so it increased congestion.

So we had to operate in a -- in a manner in which we can utilize maximum use of the infrastructure, maximum use of the road, but in this case, maximum use of the spectrum that we're assigned.

Q So spectrum efficient, getting an award for being spectrum efficient means you designed that really well; would that be

fair?
A Yes.
Q Okay. Let's talk about -- to your knowledge, sir, how many other two-way wireless nationwide networks existed in the marketplace back when you were getting awarded this Pioneer Preference?
A Well, following the FCC's definition and requirements that they put out when they did this rule-making, we were the first ones to do this.

So these were non-existing. Otherwise, they wouldn't have the proceedings. So we were the first ones to fulfill that. We built our network before anybody else.
Q Okay. So let's talk about some of the differences between one-way paging and the two-way network that you were working on. Can you give the jury a sense of what were the different capabilities between those two types of networks?
A It's hard to imagine the limitations of one-way paging back then, but back then you could only send a message from you to the recipient and hope that he got it.

With two-way messaging, we changed all that. And for now -- for the first time we were able to send a message to someone, and they could -- they could take their mobile device and then answer back to the person that sent it. So it was a -- it was a messaging system that would support communications in both directions.

Q Okay. And let's look at PX-46.

MR. SCARDINO: If you could call that up.

Q (By Mr. Scardino) Mr. Hays, have you seen this document before?

A Yes. This is a high-level description document dated 1999, and this is -- it's Revision 2.2.

Q So what does that tell you, Revision 2.2?

A Well, it meant that there were two -- two revisions before this one. So this was an ongoing document to keep updated what the system was about and have a high-level description in front of people to refer to.

Q Okay. And we -- we heard the word -- the name SkyTel before. That was the -- the -- tell -- tell the jury, again, what was SkyTel in relation to your company, MTel?

A So SkyTel was really the brand name for our product and services, so it was finally adopted as the name of the company that provided these products and services.

Q Okay. Now, why don't we turn to Page -- I believe it's Page 7 of this document. And I want to talk about the types of messages that could be sent --

MR. SCARDINO: I'm sorry. Let's go back first to the overview on Page 3.

Q (By Mr. Scardino) I want to talk about the types of messages that could be sent in the SkyTel network.

THE COURT: Counsel, approach the bench, please.

MR. SCARDINO: Yes, Your Honor.

(Bench conference.)

THE COURT: Mr. Scardino, your examination is replete with statements. Let's talk about this. I'd like to discuss that. Let's talk about the differences between one-way paging and the two-way network. These are not questions. These are all sidebar comments trying to communicate to the jury topically where you want to go next. You need to confine your examination to questions to the witness in question form that he can answer.

MR. SCARDINO: Of course.

THE COURT: Understood?

MR. SCARDINO: Yes, sir.

THE COURT: Let's proceed.

(Bench conference concluded.)

THE COURT: All right. Let's proceed.

MR. SCARDINO: Thank you, Your Honor.

Q (By Mr. Scardino) Mr. Hays, what's highlighted here?

A Well, the first highlight is SkyTel's two-way advanced messaging system, AMS.

Q Can you describe what that is to the jury?

A Well, AMS is the name that we gave to the -- to the system that we created to do the two-way paging network.

Q And a few paragraphs down below there, the second highlighting, can you read that, please?

A Okay. So supported message types include numeric, alphanumeric, voicemail, email, and binary.
Q Can you explain for the jury what each of those message types are, starting with numeric?
A Numeric was very common to radio paging. It's a way of saying a telephone number to -- to another user so they can either call you back or for other reasons.

Alphanumeric means they can send a text message -- alphanumeric text message to a -- to a user. So that's common today in other services, as well.

Voicemail, if you've got voicemail, it would be deposited in the -- in the control center and the notification would go out and you can call your message back by -- by contacting the center and retrieving the message.

Email, it was just a term that was more electronic mail back then than the term "email" was used, but it's electronic mail common to what we have today where you can send somebody an email message.

And then the binary is the -- is the type of messaging that allows you to do things like pictures or a facsimile or -- or data spread out over a -- a graphics image. So for that, you need binary.
Q Could all of these message types be transmitted in the SkyTel network?
A Yes. All of these were supported message types, as it --

as it states here.
Q Now, let's turn to Page 9 of this document, please. First I want to look at the Section 2.2.1.1.
Mr. Hays, do you see that section?
A Yes.
Q Okay. Can you describe for the jury what this document is saying about information services, please?
A Okay. So -- so what are information services? And it answers that by saying these are news, stock quotes, weather, and sports would be examples of information services that would go to a subscriber's mobile unit and be displayed to them.
And it goes to an example of saying -- they're saying MSNBC Sky News, for example, you can update that twice a day to every subscriber as part of the basic subscription package.
Q And so were all of these types of messages?
A These were the type -- types of messages. And this is a type that would be either numeric or -- I mean, alphanumeric probably, or it could be some type of message that could be incorporated in a smart pager.
Q Well, we'll come back to that -- that term. Let's go down to Section 2.2.1.2. Describe for the jury, please, what this -- this section is relaying, please.
A Okay. This is talking about transaction services. So if you transact business with a bank -- for example, so you have -- examples of transaction services are banking, travel

arrangements, shopping, credit card verification, and agent-based transactions.

Q So are these all things that you could do in the SkyTel two-way network?

A Oh, yeah, these were all supported.

Q Now, did MTel ever actually launch this two-way network?

A Oh, yes. Yeah.

Q When was that?

A That was in 1990 -- '93 -- or I'm sorry -- 1995.

Q Now, 1993, I think, we were looking at the Pioneer's Preference?

A Oh, yeah, the Pioneer's Preference was 1993. In 1995, we had the -- had the launch.

Q All right. Well, tell the jury a little bit about the launch and -- and the history surrounding that, please.

A Well, that was an exciting time for the company because the team had succeeded in putting this network together, and so we had a public announcement, and we all converged on New York City to the -- to New York Public Library, and we demonstrated to the -- to the investors and to the public how this thing worked and -- and showed that this system was -- was ready to begin services.

Q Okay. So we've heard a term, "paging." What is the difference between paging and -- and messaging?

A Well, paging is -- is messaging. I mean, we send the

messages over paging. So we use the term "paging" because it's a legacy term. But the reality of it is, it's really a messaging system that we use to transmit information back and forth among users.

Q Now, how would messages that were transmitted through the network find their way to their -- to the appropriate recipient?

A Well, we made it easy on people. We -- we assigned them a 10-digit PIN number, which is a -- a personal identification number. This way you don't have to remember a number that -- that can support a million different addresses for your unit.

So our network operating system, we matched that up with the correct thing to send over the network. So each -- each user had a PIN number. And if you -- if you addressed them, you could use an email type address like PIN number @skytel.com would be one way to do that.

Q And so you would use these PIN numbers to send all types of messages through the network?

A Yes.

Q Let's talk -- let me ask you about -- what is a smart pager?

A Well, a smart pager came along as a result of these demands for -- for advanced services. It allows a user, a company or whoever, to program the pager so it does things with the data that -- that might not be so obvious.

Like, for example, you could have a -- you could have a spreadsheet, and then data could be sent to just update particular blocks on this spreadsheet that showed changes, like, for example, you could represent prices for -- for traveling salespeople. Some of those could represent quotations for stocks and those kinds of things.

Q I think we have a demonstrative of one of the smart pagers.

Here it is on the screen. Tell the jury about this demonstrative, please.

A Well, this -- this is a Motorola product. It's called a PageWriter 2000. And as you can see, it has a nice little keyboard, which we all miss that today. Everybody wants a keyboard. And there were -- as you see on the screen, it had a way you could just select read, and you could read your -- your email, or kind of have a -- you could write, and you could write an email to be somebody and send it.

And then it had an address book, so you didn't have to remember your PINs for everybody. You could -- you could record that in your address book. And that's the way you could address the message.

Q Were there other types of devices, other than smart pagers, that worked on the SkyTel network?

A Well, there were because it was a big -- it was a big difference in the -- in the consumer marketplace. Some people

wanted very simple units. Some people wanted -- wanted to go to the added complexity and expense of a smartphone -- or a smart pager.

And so we had those provisions. And so our manufacturers would -- would come up with different types of products for different levels of usage.

Q And did all the different devices have the same features?

A No. They had -- they had different features. And some of these were limitations of features. Others were -- were type of features. Like, you know, we mentioned binary transmission. Well, not all pagers could accept binary, but most of them could.

But the NOC, in the brains of the unit, in the format of the unit in the NOC, we knew the makeup of the recipient's device so we could -- we could tailor the transmission to work with that unit.

Q So what is the -- what is an NOC?

A An NOC is a -- is the Nationwide Operation Center, so it's the brains of the network.

Q And tell the jury a little bit, please, about how the NOC would operate what its functionalities were.

A Okay. The NOC was -- originally, we had only one NOC, and that was in Washington D.C. And then we expanded by having backup to that NOC, so we had -- we had duplicate databases in Washington, Jackson, Mississippi, and eventually Dallas, Texas.

So we eventually had three centers, but they all did the same thing, and they had the same data. So if one went down, the network would continue to operate.

The function of this NOC was to be a repository for the -- for the subscribers's records arranged by the PIN number so that we knew what devices they had, what they were entitled to do. You know, if they could do these different services, we had limitations for that.

We authorized that, and we would use that to collect billing information, which we transferred to our billing system. So we had a very flexible network operations created through the NOC.

Q Was the NOC involved in sending messages to pagers in mobile units?

A Yes. It was the -- it was like the place where the message ended up before it's -- it's sent on to the end user. It's -- it's -- the message came, and they were stored in the NOC and actually sent to the -- to the end user. You could go back later on and -- and in -- in using a terminal contact the NOC and download those messages if you wanted to, for example.

Q Let's -- let me ask you about pagers. Could all the different types of devices receive the same types of messages?

A The types of messages are varied from the quality and the expense of the unit. So not all units could receive the same messages as each other. I mean, we could have a unit as simple

as just -- simple -- simply a tone-only notification. We didn't have any of those, but you could.

We had numeric types that could be -- people could send you that from a telephone, touchtone telephone. And others would have the full -- the full menu, the alphanumeric, and binary, and so forth.

Q All the way up to the -- including the smart pager that we see on the screen?

A Right. So -- yeah, so we had different levels we provided for that service.

Q Could the devices all receive the same length messages?

MR. SELINGER: Your Honor, objection. It's not clear what time we're talking about, what time frame.

THE COURT: Overruled.

A So would you repeat that, please?

Q (By Mr. Scardino) Sure.

Could all the different devices that operated on the SkyTel network receive the same length messages?

A No. There were some differences in the message lengths. They could receive -- some of them could receive 10,000 character messages. There was some specialized products -- products that could actually go up to 40,000 characters for a message, for a single -- single send operation.

Q What is a character?

A Well, a character is the -- is the payload for the

messages sent to the pager. Usually, it's -- it's like a binary coded character, like a letter a number. Or in the case of binary, it could be -- it could be a collection of bits, and so you could say it could be a certain binary length.

Q So if -- if there were different length messages, would that be a different number of bits?

A Yeah. The messages transported through the packets in this network. And if you had more packets, you could convey more messages. So some pagers could -- could actually, you know, accept and receive longer messages than others.

Q So how would the network handle sending different length messages to the different units?

A Well, the -- the over-the-air messaging protocol was arranged so it would -- it would tell the unit what's coming over and how long this is going to be. And it would -- it would -- it would -- it would measure out the correct flow so you wouldn't overwhelm the recipient's device. And you could keep the network going that way.

Q So that's -- that's getting to my next question, which is, what would happen in the SkyTel network if a device couldn't handle a message because it was too large or too big?

A Well, one -- one thing that we could do is take advantage of this sending again function where, if you have a short message going to a pager that could only accept a short message, but you have a longer message in mind, you could send

the message like, it's a longer message, but only the first part would get through, and then they could press the button and have the rest of the message sent.

So you could get this in -- in different installments and displayed to the user.

Q Now --

THE COURT: Let me interrupt just a minute.

Ladies and gentlemen, I think this is probably as good as any place for us to take a recess. You've been back in the courtroom almost two hours.

I'm going to allow you to retire to the jury room and recess for a break at this time. You may just close and leave your notebooks in your chairs, if you'd like.

Don't discuss the case or anything about it. Take this opportunity to stretch your legs, get a drink of water, and we'll be back in here and continue with this witness in a little bit.

The jury is excused for recess at this time.

COURT SECURITY OFFICER: All rise for the jury.

(Jury out.)

THE COURT: Be seated, please.

Mr. Hays, you are going to have to speak up. You are mumbling over there. I'm 3 feet away from you, and I'm having a hard time hearing what you're saying. I have real concerns how much of this the jury is or isn't getting.

I love a southern drawl as much as anybody, and I grew up 30 miles south of Alabama, I'm used to it, but some of these jurors probably are not. And so you're going to have to slow down, and you're going to have to speak distinctly. And you're going to have to speak loud enough where everybody can hear you.

Will you work on that for me, please?

THE WITNESS: Yes, sir.

THE COURT: Okay. We're going to take a recess, counsel. Take about five minutes and then meet me in chambers, and we'll take up some of the remaining matters that we need to go over.

Court stands in recess.

COURT SECURITY OFFICER: All rise.

(Recess.)

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. Mr. Hays, you may return to the witness stand.

And I think, sir, if you will turn your head toward the jury, it will put you in line with the microphone and that will help with the volume, perhaps with everybody's ability to understand what you have to say.

THE WITNESS: Thanks.

THE COURT: All right. You may return to the podium, Mr. Scardino.

MR. SCARDINO: And, Your Honor, may I ask one question?

THE COURT: You may.

MR. SCARDINO: I was going to use the flip board to do a drawing, but I've got a concern with doing it here. The jury may not be able to see it over the podium.

THE COURT: No. You can move it, but you'll probably have to prove it around this way (indicating) --

MR. SCARDINO: Okay.

THE COURT: -- if there's room.

MR. SCARDINO: Thank you.

THE COURT: Are you going to do it as soon as they come back in?

MR. SCARDINO: Yes, sir.

THE COURT: Okay. Go ahead and preposition it.

And, Mr. Selinger, you are free to move in the courtroom where you need to see whatever he's going to write on the board.

MR. SCARDINO: Thank you, Your Honor.

THE COURT: Once you pass the witness, you and Mr. Selinger need to determine if he's going to use the same chart on cross. If so, you can leave it; if not, you need to move it back where it came from.

MR. SCARDINO: Yes, Your Honor.
THE COURT: And next time we have a conference in chambers, Mr. Scardino, I expect to see you in the room.
MR. SCARDINO: Yes, Your Honor, of course.
THE COURT: You were the only one not there.
MR. SCARDINO: I'm sorry.
THE COURT: All right. Mr. Floyd, let's bring in the jury.
COURT SECURITY OFFICER: All rise for the jury.
(Jury in.)
THE COURT: Please be seated.
All right. Counsel, you may continue with your direct examination of the witness.
MR. SCARDINO: Thank you, Your Honor.
Q (By Mr. Scardino) Mr. Hays, before the break, we were talking about what would happen in the SkyTel network if a device couldn't handle a message because it was too big. I'd like to illustrate the example that you were just discussing for the jury.
So can you give us an example of -- of that, again, and I'll draw while you talk.
A Okay. Great.
THE WITNESS: Is this better, by the way, for the jury?
THE COURT: Don't ask the jury a question. You can

ask me. And, yes, it's better.

THE WITNESS: Okay. That's better. Okay. Thank you very much.

A Okay. So the example we're talking about is a message that's too long for the pager to receive.

Q (By Mr. Scardino) And so, Mr. Hays, why don't we start with this.

A Okay.

Q I'm going to have two devices. So let's call one of those Bob's device and the other one Alice's device, okay?

A Okay.

Q Now, the assumption is those are two different devices with different capabilities. So walk us through the example, please.

A Okay. So Bob's going to send a message to Alice. And these are two different devices with two different message-handling capabilities.

So what does the NOC do when a message comes in to Alice from Bob, but the message is too long for Alice to read on her unit.

Q And in this example, how long are we going to have the message be?

A 5,000 characters.

Q Okay. Okay.

A But Alice's unit can only handle 2500 characters.

Q Okay. So how would the NOC deal with that problem?
A Well, several ways. One is they can just send that message over to Alice, which will result in some sort of error that Alice can then press a button and have the rest of the message sent to her --
Q Okay.
A -- on a separate sending. And that's probably the most straightforward way to handle it.
Q Okay. And then are there other ways that would handle it?
A Well, there are other ways you can handle it by -- by simply handling the NOC, break that message into two 2500-character transmissions, separate transmissions.
Q Okay. So let me draw -- I'll put 2500 over here, and -- and so what would happen in that scenario?
A Well, in that scenario, there was a protocol that the NOC would follow that would tag that first message so that the second message would know that it's the second message. And so when the device gets the two messages, it can reassemble them into one 5,000-character message.
Q So is that a pretty accurate drawing of what you're describing there?
A Yes.
Q Okay. So in this scenario where it's breaking up the message into 2500 characters, two -- two parts, how would the -- how would the network know how to get both of those

parts to the -- to the mobile unit in the network?
A Well, first of all, as we mentioned earlier, the NOC has a directory that shows what kind of unit that Alice has. So when this 5,000-character message comes into the NOC, it knows that it can't simply send in a 5,000-character message and have it correctly display that message.
But it does know that it can break it into two parts. And it knows how to tag the two parts so that when it arrives in the device, the device is able to reassemble it into one composite message.
Q So in -- in terms of how it would do that, would it use the PIN that you described earlier?
A The -- the message going into the NOC would be a PIN-addressed message, just like any other message.
Q So would each of these message parts have the PIN?
A Well, actually, the -- the NOC will take care of the addressing, so the addressing from the NOC to the user probably won't even show the PIN. It will just show the electronic address of that device because it has -- has that cross reference in the NOC database.
Q And so each of the devices that operate in the network, do they have their own PINs?
A Yeah. The reason for the PIN -- the separate PIN and the electronic numbering system is in case your device goes out, they don't have to change your PIN in order to get the passage

to you. They can just take the new device and this electronic serial number and associate that with the PIN in the directory.

Q So describe for the jury the components of a message that would come out from the NOC with the address information and the message in it and everything else, what does that -- what are the components of a message?

A Well, in this system, there are 1 billion possible addresses that the NOC can use to send a message.

So to keep all that straight, when the user signs up with an NOC, the NOC makes a record of the person, they have a PIN number they use to enter the message, but when that message is actually transmitted or sent to the user, it -- it goes into the database and associates the PIN with the electronic serial number, that long number that can address up to a billion pagers.

And so that's what's actually sent out from the NOC. That's how it keeps it straight.

Q Okay. And where in the message -- in the transmission, what is actually sent out?

A Okay. Well, what's actually sent out -- well, there's two parts of the message, right?

So the first part has a -- has a first block, has the address of the unit --

Q Okay.

A -- in the first part of it.

And then there's a -- some payload data, we call it. It's the actual -- actually, the message text.

And then the -- and then there's a -- there's a block at the end of this that -- that describes the functionality process.

In other words, it would -- it would have a code in there that tells them this is a two-part message, and this is the first part of the two-part message. So that -- that's how the first part would go out.

The second part would have that tag on the end of it to describe the fact it's the second part of a two-part message.

Q So what should we call this third part of the message block that has that information in it?

A Well, it can be called the functional block.

Q Okay.

A So we have -- we have an address, we have the payload, and the functional.

Q And that will do for that?

A Yes.

THE COURT: Let's make sure both of you gentlemen let the other one talk before you start. The court reporter can't take down two people talking at the same time. So be mindful of that.

MR. SCARDINO: Thank you, Your Honor.

THE COURT: Let's proceed.

Q (By Mr. Scardino) So this -- this system of message components, was that something that you invented?
A This is what we collect -- collectively decided would be the best way to structure the messages in the NOC. So any one person, I don't think, can take credit for that.
Q Well, and --
A And part of what you're doing now with the whiteboard and -- and dialogue is kind of what we went through -- we described it the lake house meetings early on when these kind of issues came up, so yeah.
Q And that was probably too broad a question. Let me be more specific.
Was this system of addresses and payload and functional information at the end of a message, that -- that component structure of a message, was that something that you knew before you developed the -- the SkyTel two-way system?
A I can't -- I can't recall if I knew it before then or not, so...
Q Okay.
A It flows. I mean, it certainly is the correct way of doing it. But I don't -- I don't remember the exact train to get to that track.
Q Oh, okay.
Well, that's -- train is an interesting analogy because I was thinking this looks like train cars.

A It does, doesn't it?

THE COURT: All right, gentlemen. If you want to have a discussion about train cars, do it some other time. Let's ask questions, Counsel, and let's answer them and limit the answers to the question asked.

Let's proceed.

Q (By Mr. Scardino) Let's move on.

So what were the -- were the two-way network technologies that you were working on at SkyTel limited to operation in this Narrowband PCS spectrum?

A The technologies we developed were for narrowband spectrum. The actual techniques had applications beyond the narrowband spectrum because, as we mentioned earlier, spectrum is scarce, and no matter whether you have broadband or narrowband, you have the same eventual problem of running out of spectrum.

Q So in opening, the jury heard this idea of a pipe, that spectrum is a pipe. Is -- is a narrowband just a different size pipe than a broadband pipe?

A That's a good analogy because you obviously get more stuff through a bigger pipe.

Q And let's talk about -- talk about that. In terms of wireless networks and configuring and designing wireless networks, how would you design a network differently for a small pipe or a big pipe, if you would design it differently?

MR. SELINGER: Objection, Your Honor. I can't tell -- I can't tell if this is a hypothetical calling for an expert opinion or whether he's asking about something this witness actually did.

THE COURT: Restate your question, Counsel.

MR. SCARDINO: Yes, Your Honor.

Q (By Mr. Scardino) In the context -- in your experience, sir, what you were working on at SkyTel and your other experience, would you design a wireless system differently based on the size of the pipe with respect to spectrum efficiency?

MR. SELINGER: Objection. There's no foundation for that -- no foundation that he actually did it. It's still not clear whether this is a hypothetical or whether this is what he actually did.

THE COURT: I'll sustain as to lack of foundation. If you want to try to lay a foundation, you may do so.

MR. SCARDINO: Thank you, Your Honor.

Q (By Mr. Scardino) Mr. Hays, you were involved in designing and deploying the SkyTel one-way wireless system?

A Yes.

Q Okay. And you were also involved in designing the SkyTel two-way wireless system?

A Yes.

Q Were -- had you been involved -- had any -- any experience

with any other wireless systems?
A Well, I was involved when we built our first cellular system in evaluating equipment and looking at network structure and so forth. I was involved with -- when we did our American mobile satellite communications system, which was a broadband satellite-based system that was launched.
Q And so in those cellular systems and the satellite system, those were not narrowband systems?
A Those were broadband systems, yeah.
Q So in your experience, when you're designing for spectrum efficiency, narrowband or those broadband systems, do -- do you do it differently?
A Without the constraints of a smaller pipe, you very well could start out differently. The eventual part that you reach is when you run out of capacity and you begin to look for techniques to -- to get to where you need to be. And so these techniques that we developed for narrowband will apply to broadband.
Q So let's talk about this issue of capacity because the jury's heard about that. What is capacity in the context of wireless networks?
A Well, capacity -- you know, we talked about payload awhile ago. Obviously, if you've got any kind of network, a train network or a highway system, you want to divide -- you want to design it for maximum capacity. That means you're going to

have traffic flowing to the system. You don't want congestion.

For example -- a good example for that would be over in Dallas, the Cowboys play, right? So all of a sudden, at the Cowboys stadium, there's a huge demand for services. You know, they've got a stadium that can seat almost 100,000 people, for example. If they all have these two-way units and they start using them, all of a sudden, you've got congestion you didn't have before that event.

So we call that the convention scenario. And so we had to design for that.

So that's a -- that's a reason why congestion does occur on occasion. It didn't occur all the time, but it -- but it does happen. And when it happens, you have to be able to keep the system going.

Q So capacity relates to the number of users that are on the network?

A The number of users and -- and the frequency in which they send the message. So if these are all Cowboys fans out there, they're probably going to send a lot messages every time they score. So that's a -- that's a constraint because you have to design across. You have to make sure you've got the right capacity to keep the system going.

Q Now, could you address capacity issues on the network side?

A On the network side, our NOC actually measures what's

going through it and -- and how efficiently things have been delivered. So we get -- we get feedback from that, and we can adjust certain parameters.

You know, for example, you can hold back messages, if you want to. You can slow it down, even though -- you want every message to get through. If they all go through at the high rate, they may -- they may congest the system to the point it can't function.

So the NOC has considerable control functions to make sure that doesn't happen.

Q And can you also address these capacity issues in the network on the -- on the mobile unit side, on the device side?

A Well, yeah.

Some of the things we talked about is -- is trying to control how many resending has to take place in the unit to get the message correctly sent to a user. And if the message is -- is distorted, it's got some white spots in it or characters that are obviously wrong and you have to resend that, then that takes capacity.

But sometimes what we've observed is some of those type of messages can be read across and still the user can still understand what's being said, like call me at a certain number. If it's your number, you know what the number is. And you may not have to have that resent to you.

So they just don't press the button and it just --

that's -- that's what's displayed. It's a good enough message, and that's what they get. That's good for them because it saves us capacity.

But it also translates in lower cost to the user, but it also allows the user to go on about his business and not have to worry about this unit responding to -- to resend copies of messages that may cause it to, on occasion, vibrate or sound. So it's a convenience as well.

Q Now, Mr. Hays, looking at our example over here, what you're describing, so you're describing that you can put a feature in the mobile unit that would have the 2500-character first part of the message and then let the user choose whether or not to get the second part of that message?

MR. SELINGER: Objection; leading.

THE COURT: Sustained.

MR. SCARDINO: I'll move on.

Q (By Mr. Scardino) So Mr. Hays --

MR. SCARDINO: Why don't we pull up PX-1.

Q (By Mr. Scardino) Okay.

MR. SELINGER: Your Honor, may I return, and could we move the easel back, or should we wait until the end?

THE COURT: No. Let's let him pass the witness, and then we'll determine whether to leave it or not.

Proceed, Mr. Scardino.

MR. SCARDINO: Thank you, Your Honor.

Q (By Mr. Scardino) Okay. So this is the patent that we're all here to talk about, Patent No. 5 -- 5,754,946. What's the name on this patent?
A Nationwide Communications System.
Q Okay. And you're one of the inventors on this patent. Is that your name there?
A Yes, towards the bottom.
Q Okay. William D. Hays of Jackson, Mississippi, that's you?
A That's -- that's me.
Q Okay. Who are the other people that are listed on here?
A Well, the first name is -- is Dennis Cameron. He's from Jackson.
Q Did all of these other names -- did they all work with you on this project?
A Yes.
Q Okay. So this was a collaborative effort?
A These are the collaborators, yes.
Q Okay. Now, let's also look at this other part that's highlighted. It says: Assignee. Who is the assignee there?
A Mobile Telecommunication Technologies, Jackson, Mississippi.
Q And that's the company you work for that we've been talking about today?
A Yes.

Q Okay. Now, was this -- does this patent involve generally the -- the solutions to the capacity problem that we were talking about moments ago?

A Yeah. It -- it expands the current technology to -- to the case where the user becomes empowered to have messages approved by the -- by the sender -- I mean, by the user so that they don't have to have it retransmitted in order to get the correct message so that saves airtime.

So that was one of the features. It's a manual type of error correction system.

Q Now, let's go back to when you conceived this patent. What was the process at MTel to -- or was there a process at MTel to convert new ideas into -- into patents?

A We had a plan that evolved over time that -- that caused the people who collaborated on the patent to be very formal in how they filled out their ideas and forms. They submitted forms and written documentation so that the -- the patent committee could look at this and decide if it's worth proceeding with.

It was. We would engage the patent lawyers to take a look at it, and they would take it and begin to draft the patent application.

Also, the function of the lawyers was to look at the inventors and make sure we have the right inventors on the patent and not have people on there that shouldn't be on there.

But then, again, we had to exclude -- we had to include everybody that had something to do with the patent. So those two processes were done and respected, as we continued.

Q Why was it important to MTel, your -- your employer, to capture these ideas and file patents?

A Well, we were developing technologies for a network that we wanted to protect because developing these things is expensive. And so we wanted to make sure that we had a basis for collecting revenue as we continued and support development of new ideas.

Q Now, who owned the patent when it was filed and when it was issued?

A Well, patents are -- are -- are filed and given to inventors, to people. The rights to these inventions can be assigned to other entities like companies.

And it was very common back then, and even today, if you work for a company and they're paying for your time for these development ideas, if -- if you document and file the patent, you get the patent.

It's very common to have your -- your rights assigned to the company that you work for. So you may not own the rights. I don't have the rights to any of these patents, for example.

Q Now, this patent, the '946 patent, did you assign that patent to the company?

A Yes.

Q Okay. So, Mr. Hays, were you paid a base salary when you worked for the company?
A Yes.
Q And did you receive any special compensation when you were awarded patents?
A Well, I always wished I did, but I never received any special compensation for that. So I always figured it was part of the job to do what I was doing. And that's the way -- the other people felt the same.
Q Are the -- are you proud of the work you did at MTel?
A Yes. I think it was -- it was a -- it was a chance to develop something that had never been done before. And it was very helpful, I think, to the -- to the nation and to -- and to the economy.
Q Tell us, again, when you left MTel.
A Well, I left MTel in 1999. I think we mentioned earlier that MTel had sold to MCI. And I figured at that point of my work with them, it was better for me to just to move on because the development work would not be as intense as it was, and a lot more routine than I'm used to. So I went on to do other startup type -- type activities.
Q Mr. Hays, what happened to the -- your inventions, including the '946 patent, when you left the company?
A Well, as far as I know, they stayed with the company and different owners took -- took ownership. The patent rights

went -- went to these companies. But I don't -- I don't know the exact details of that.

Q Mr. Hays, let's -- let's talk a little bit about MTel, who is the Plaintiff here, and the MTel you worked for.

Is the MTel that's the Plaintiff here different than the company that you worked for?

A Yes. This is a different company that we're talking about. I guess MTel, LLC you talked about, as opposed to the MTel that I worked for, are two different companies. Although, you know, the companies were acquired, but they were two different companies.

Q Okay. How do you feel about the fact that the company that's here today in this courtroom that calls itself MTel is using the same name that was used at the company that you used to work for?

A Well, I'm very proud of the fact that all the work we did to document and to seek patent protection on these ideas is -- you know, without this process, they just die and be part of the paperwork in the Patent Office. But now it has a real chance to survive.

And -- and because it is a public document, it is published. Other people can build on these ideas and run with them. So I think it's a very good -- very good ending to what we started.

Q Mr. Hays, are you a consultant with MTel, the party here

today?
A Yes.
Q And are you paid as a consultant?
A Yes.
Q Do you have any stake in the outcome of this lawsuit?
A No. I have no stake in the outcome of the lawsuit. Just my time.
Q Do you have -- do you have any ownership interest in MTel?
A No, I have no ownership in this MTel.
MR. SCARDINO: Thank you, Your Honor. I pass the witness.
THE COURT: Cross-examination.
Mr. Selinger, are you going to use the chart?
MR. SELINGER: I am not, Your Honor.
THE COURT: All right. You need to move it back to where it was, Mr. Scardino.
MR. SCARDINO: Yes, Your Honor.
MR. SELINGER: May I deliver some --
THE COURT: Yes, you may.
MR. SELINGER: Thank you.
THE COURT: And, Mr. Scardino, you need to turn the page so it's a blank sheet of paper.
MR. SCARDINO: Yes, Your Honor.
MR. SELINGER: May I approach the witness, Your Honor?

THE COURT: You may.

All right. Mr. Selinger, you may proceed.

MR. SELINGER: Thank you.

CROSS-EXAMINATION

BY MR. SELINGER:

Q Hello, Mr. Hays.

A Good afternoon.

Q Pioneer Preference is not a patent, correct?

A You're correct. Pioneer Preference is not a patent.

Q You never applied to the Federal Communications Commission to obtain a patent?

A Correct. The -- the application process, as was explained earlier, is done through the PTO or Patent and Trademark Office.

Q And the '946 patent, which is one -- one you put up on the screen, was not the basis for the Pioneer Preference, correct?

A Well, the -- as we said, the Pioneer's Preference is separate and apart from the patent process. So that's a correct assumption, yes.

THE COURT: Mr. Selinger, pull the mic down a little bit, please.

Thank you.

Q (By Mr. Selinger) The -- the Pioneer Preference award that your company obtained was for narrowband, correct?

A Yes. It was in response to the -- the FCC's report and

order for a Pioneer's Preference proceeding that was specifically aimed at narrowband applications.

Q There -- there was also a Pioneer Preference award for broadband cellular license, correct?

A Well, the FCC had -- had two proceedings. One of them was for narrowband and one was for broadband. So they had an interest in both areas, yes.

Q And your company only applied for narrowband, correct?

A That's correct. That was our -- that was our -- the field we were operating in and the field we wanted to pursue the work, yes.

THE COURT: Mr. Hays, Counsel asked you: Did you just apply for narrowband? And the answer was: Yes. He didn't ask you why or what was the field your company was working in. You're giving more answer than the questions call for.

Mr. Scardino's going to get a chance to get back up and ask you other questions after Mr. Selinger is finished. So with that in mind, limit your answers to the questions that are asked, please, sir.

THE WITNESS: Yes. Thank you.

THE COURT: All right. Let's proceed.

Q (By Mr. Selinger) Mr. Hays, you have in front of you Plaintiff's Exhibit 46. That was the high-level system description that your lawyer showed you.

A This is in the two books that you --
Q No.
A Oh.
Q This is the one that your lawyer -- your lawyer had.
A Oh, okay. So I should get this book here? Okay.
Q Yes, sir.
A Okay. The high-level description, that's what we're looking at?
Q Yes, sir.
A Okay.
Q And the first page, I believe you said, has -- of Plaintiff's Exhibit 46, has a date of May 4, 1999; is that correct?
A That's correct.
Q The -- can you -- are you aware of whether there's an earlier date in this document than a copyright notice of 1997?
And I'll represent to you I could not find one.
A The only thing I notice is this is Revision 2.2, and I don't know about the other revisions. So the only one I'm familiar with is this one that we have in front of us.
Q Now, is this a complete copy of the SkyTel high-level system description?
A If you give me just a moment, I'll -- I'll verify it.
(Pause in proceedings.)
THE COURT: Have you had enough time, Mr. Hays?

THE WITNESS: Yes.
A I wanted to verify it. This -- this book is in two parts, Part 1 and Part 2. But it looks like there was a repeat of Part 2, and I was trying to figure out why that was. Also, there's a copyright notice in this one. It's dated February the 5th, 1988.
Q (By Mr. Selinger) What -- what page is that on?
A It's -- well, it doesn't say the February part, but, if you turn on the second part -- if you turn to the -- okay. If you turn to the third page, it says 1997, but if you turn to the fourth page, it says 1998, and that 1998 is continuing through the document.
Q 1997 and 1998, correct?
A Correct.
Q Okay. Let me -- let me ask you this --
MR. SELINGER: May I get access to the ELMO, Your Honor?
Q (By Mr. Selinger) I'm putting -- this is the -- I'll represent to you this is the table of contents from the first section.
And will you agree with me that the table of contents includes Section 1, the overview, and then everything under Section 2 is about the NOC, the Network Operation Center?
A Yes.
Q And I'm going to put on the ELMO the table of contents

from Page 2 HT -- MTel Bates No. 2633.

And -- and would you agree with me that the table of contents on this portion of Plaintiff's Exhibit 46 is as you're looking at it?

A Yes.

Q And would you agree with me it doesn't mention mobile unit?

A When you say it, that's the Part 2 that we're talking about?

Q Yes, sir.

A The Part 2 doesn't mention mobile unit in -- in the table of contents?

Q Yes, sir.

A I would agree with that. I don't know that that would extend to the actual text, though.

Q SkyTel, I believe you testified, began operating its nationwide pager -- two-way pager system in September of 1995, correct?

A That was the launch, yes.

Q And -- and you agree that the application for the '9 -- '946 patent was filed about two years before that, correct, in 1993?

A Yes.

Q And you also agree that -- that the SkyTel commercial two-way pager network used pagers that had automatic error

correction, correct?
A What period are you talking about for the automatic error correction?
Q Let's start with the launch.
A Okay. You're correct. That's -- they had the ARQ system in that -- in that position, yeah.
Q And -- and you don't recall whether SkyTel's commercial two-way pager system ever had pagers that enabled the user to see messages with errors and decide whether to ask for retransmission or not, correct?
A I didn't say that, and I don't concur with that, because I actually used those kind of pagers that had that capability, and I can -- I can recall using those pagers on the system, yeah.

Now, are you -- are you trying to limit your question to the time that we're talking about here or what?

THE COURT: Mr. Hays, if you don't understand the question, tell the lawyer you don't understand the question. If you -- if you have any doubt about it, ask him to rephrase. But we're not going to have a back and forth where you're asking for clarification and he's giving it to you, and then you're telling us something else.

You're here to respond to his questions. And if you don't understand his questions, please ask him to restate it and tell him you don't understand it. If you respond, he'll

assume and I'll assume and everybody will assume you understand the question, all right?

THE WITNESS: Yes, sir.

THE COURT: Okay. Ask your next question, Counsel.

MR. SELINGER: Thank you, Your Honor.

Mr. Lodge, I believe you have -- could you pull up Defendant's Exhibit 1?

Q (By Mr. Selinger) And, Mr. Hays, the patent issued on May 19, 1998, correct?

A Yes, correct.

Q And, Mr. Hays --

MR. SELINGER: Mr. Lodge, if you wouldn't mind blowing up the last sentence in the abstract, the mobile -- yes.

Q (By Mr. Selinger) Do you see that last sentence, Mr. Hays, the mobile unit?

A I'm trying to understand what you've got.

Q It's now been highlighted for you.

A Oh, yes. I see where you high -- yes.

Q And -- and that sentence says: The mobile unit includes a switch that allows a user to request the network to retransmit a received message that contains errors, correct?

A Correct.

Q Was that a sentence that you wrote?

A I don't recall writing a sentence like that. In fact --

yeah. So, no, it's not a sentence I wrote.
Q Now, error correction was a focus of the '946 patent, correct?
A Error correction was a focus of the patent, correct.
MR. SELINGER: Mr. Lodge, if we could take that one down and go to -- go to Block 63 on the first page on the left.
Q (By Mr. Selinger) Do you -- do you have that in front of you, Mr. Hays, a blown-up part of Block 63?
A Yes.
Q And it says: Continuation-in-part of Serial No. -- Patent No. 5,590,403.
Did I read that correctly?
A Yes.
Q And you understand that a continuation-in-part means that the '946 patent application was a follow-on that added additional material to the specification of the '403 parent, correct?
A No.
Q You didn't understand that?
A Well, I don't understand the real meaning of continuation-in-part applications.
Q Were -- were you here for my opening statement?
A Yes. I had a hard -- difficult time hearing you back there, but, yes, I was here.
Q Do you recall that I showed a slide to -- to the jury with

Figure 16 in the '403 patent and a comparison of -- of Figure 16 of the '946 patent?

A I don't -- I don't recall that slide, no.

MR. SELINGER: Ah, thank you, Mr. Lodge.

Q (By Mr. Selinger) Can you take a look at Opening Slide 15. Do you see -- do you agree that the top portion shows Figure 16 of the '403 patent, and the bottom portion shows Figure 16 of the '946 patent?

A Yes.

Q And do you agree that -- that the one difference is request retransmission button 1622?

A Yes. That's the difference in those two figures, yes.

Q Thank you.

MR. SELINGER: Mr. Lodge, would you please go to Column 4 of the '946 patent? It's PDF 39.

Back to Column 4, please.

And if you'll blow up the last paragraph on the right-hand column, Lines 41 to Column 4, right.

Shrink that down just a little bit.

Q (By Mr. Selinger) So this is -- this is a paragraph in the background section of the '946. Do you agree that in a conventional communication system, the transmitters transmit messages in blocks to a mobile unit, each block including an error correction -- error correcting code?

It's being highlighted for you.

A Yeah. Would you clarify something? This is -- the wording for this particular patent, right, it's not like any conventional communication system. This is a particular one, correct?

Q Well, these are -- these are words in a patent for which you signed an oath.

A I know, but your question was: Do I agree with the way it's written, and I'm telling you, I don't understand the implication. Is this -- is this conventional communication system germane to all of them or to this particular patent?

Q Do you not know?

A I'm not -- I'm not a patent lawyer, so this verbiage, I have to have some clarification to understand what you're asking me. And what I'm asking is, I don't understand the verbiage. Can you please explain it to me a little bit more?

Q Sir, I'm hoping you would explain it as -- as the co-inventor that was here. Can you do so?

THE COURT: All right, gentlemen.

MR. SELINGER: I'm sorry. I apologize, Your Honor.

THE COURT: Well, the witness is either going to say "I don't understand the question," or the witness is going to give an answer.

I don't know how to be any clearer than I am about that, Mr. Hays.

And, Mr. Selinger, if the witness indicates he

doesn't understand the question, then we don't need a back and forth. You just need to restate the question in hopefully a way that he can understand and answer.

Now, let's proceed with answers from the lawyer and -- excuse me -- questions from the lawyers and answers from the witnesses.

Ask your question.

MR. SELINGER: Thank you.

Q (By Mr. Selinger) Mr. Hays, do you agree that the first four sentences in Column 4 of the '946 patent ending around Line 60 describe conventional automatic error correction?

A Yes.

Q And do you agree that conventional automatic error correction was not something invented by MTel in the early 1990s?

A Yes.

Q And looking at the last two sentences in -- in Column 4: This technique ensures that messages are accurate but consumes a great deal of airtime, driving up the costs of mobile messaging, often needlessly.

Do you see that?

A Yes.

Q And did I read that correctly?

A Yes, you read that correctly.

Q And there -- and then it says: Therefore, it would be

desirable to reduce the needless retransmission of some message blocks to reduce costs and conserve system resources.

Correct?

A Yes, that's what it says.

Q And -- and the solution was the request retransmission button to allow error correction to be user optional, correct?

A I'm not understanding that question.

Q Did the '9 -- is -- is it correct that the '946 patent set out to solve this problem -- or perceived problem of needless retransmission of some message blocks?

A Yes.

Q And is it correct that --

MR. SELINGER: You can take that down, Mr. Lodge.

Q (By Mr. Selinger) Is it correct that the solution was to add the request retransmission button 1622 so that a user, in theory, could look at the received message and decide if it was sufficiently correct or whether the user needed to request retransmission of the message or a part of it?

A Yes.

Q Thank you.

Motorola -- is it correct that Motorola made pagers for use in SkyTel's two-way pager system?

A Could you clarify that to mean all pagers or some pagers or...

Q Is it correct that some of the pagers for the SkyTel

two-way paging system were made by Motorola?
A Yes.
Q And you -- you, in fact, worked with people from Motorola to have pagers made that would work in the SkyTel -- SkyTel two-way paging system, correct?
A Yes.
Q Do you recall working with a man at Motorola named John Kane?
A I don't recall a John -- John Kane?
Q Yes, sir.
A No.
Q Do you -- do you still use the POP application on your smartphone?
A Would you clarify that, the word "POP," I guess, or the words you're --
Q Do you recall testifying in the past that you used the POP application on your smartphone?
MR. SCARDINO: Your Honor, objection; relevance.
THE COURT: Overruled.
A Yes, I used the POP application as an email, yeah.
Q (By Mr. Selinger) Do you agree that the '946 patent does not contain the word "email"?
A I would have to read the patent more closely to say -- to answer that.
Q Let me ask you this: Will you take my representation to

you that the '946 patent does not contain the word "email"?
A Not without examining the patent.
Q You knew you were going to -- you were coming here to testify today, correct?
A Yes.
Q You knew you were going to be questioned about the '946 patent, correct?
A Yes.
Q You're -- you're a consultant -- are you a consultant to the Reed & Scardino firm or to MTel?
A My contract is with the Reed & Scardino firm, so, technically, I'm a consultant to them.
Q And those are the lawyers sitting here at counsel table, correct?
A Yes.
Q Did you happen to hear me say during opening that the United States Patent and Trademark Office rejected the application for the '946 patent five different times?
A Yes. I heard your statement.
Q And you -- you agree with that statement, correct?
A Well, please clarify what you mean by -- I don't know what the implication of your question is, so I don't know how to answer it, I guess.
Q Well, do you agree -- let me clarify.
Do you agree that the United States Patent and Trademark

Office examiner issued five separate rejections stating rejected?
A I don't understand the term "issued rejection."
Q You were the point person at MTel in connection with obtaining patents, correct?
A The point person, yes, uh-huh.
Q And -- and you received communications when -- when the Patent Office responded to applications from your company, correct?
A No. My patent lawyers received those communications from --
Q And they --
A -- and involved me.
Q And they sent them to you, right?
A Occasionally, yes.
Q When you worked at the Mississippi MTel, you maintained a record book with notes about things you were doing on technical projects, correct?
A I had at least one notebook, correct.
Q And you never saw your notebook again after you left your job in 1999, correct?
A No.
Q No, it's correct?
A I never saw the notebook again, so yeah.
Q And you don't recall what -- what notes you made in that

record book, do you?
A No, except for that one page that you showed me. That's the only one.
Q And that was -- that was during your deposition?
A That was during a deposition.
Q And that -- that was not about the '946 patent, correct?
A Correct.
Q Now, the reason the system you disclosed in the '946 patent had a message retransmitted was because there was an error in a portion of the message that the mobile unit received, correct?
A Could you clarify your question as to whether you're talking about automatic system or the manual system?
Q I'm talking about the system disclosed in the '946 patent.
A There's -- there's two systems disclosed in the patent, so...
Q That -- that's correct, isn't it? There's an automatic error correction system --
A And a manual.
Q -- and right -- right after it is the manual?
A Yes, correct.
Q And the reason the manual system was disclosed by you, the reason the manual system had a message retransmitted was because --
MR. SELINGER: Strike that.

Q (By Mr. Selinger) The automatic system disclosed in the '946 patent retransmitted a message automatically if there was an error in a portion of the message received by the mobile unit, correct?
A Could you clarify that as meaning did or could?
Q Did.
A Did do, right?
Q Yes.
A Not could do? I would say no.
Q That wasn't how the automatic error -- that wasn't how the automatic error correction you disclosed worked?
A My point is there are two systems disclosed. You're not limited to either one system. So one doesn't preclude the other one.
Q Your understanding of the invention of the '946 patent is that the original message is transmitted, it shows up with an error, and the user decides whether to request a retransmission of the error so the message would become readable, correct?
A Yeah. I -- I need a clarification on that one. Are you talking about the manual system or the automatic system? Because one is not -- both -- both are allowed in the patent, so I don't know how to answer that exactly.
Q I'm talking about the manual system.
A The manual system allows the -- as you stated, yes.
Q Now, you don't recall any analysis in 1993 of what costs

might be increased as a result of giving the user the option of reviewing the message that might be corrupted instead of automatically having the user receive a corrected message?
A No.
Q Your understanding as a co-inventor with respect to the user optional manual message delivery was that the mobile -- mobile unit receives something for at least the second time when it is being transmitted?
A I'm sorry. I didn't hear the question completely. Could you repeat it, please?
Q Yes. Your understanding as a co-inventor was that the '946 patent disclosed that the mobile unit receives something for at least the second time when it is being retransmitted?
MR. SCARDINO: Your Honor, I'm going to object to that. It's improper expert opinion testimony. Mr. Hays is not here as an expert. He's here as a fact witness.
THE COURT: Overruled. He's asking him what the patent that he's one of the co-inventors on does or doesn't do. That doesn't call for an expert opinion.
Can you answer the question, Mr. Hays?
A I'm still lost in the question. Maybe I'm not hearing this thing properly, but if you would indulge me and maybe say it one more time, I can answer it.
THE COURT: Mr. Selinger, would you restate your question, please?

MR. SELINGER: I will, Your Honor.
Q (By Mr. Selinger) Your understanding as a co-inventor of the '946 patent was that retransmitting a message to the mobile unit meant having the central control computer send the message again to the mobile unit?
A Yes.
Q Your understanding as the co-inventor of the '946 patent was that retrieving an attachment which has not been downloaded with the -- with the email was not a retransmission?
MR. SCARDINO: Objection, Your Honor. This is the infringement scenario that's in this case. This is expert opinion. This is the stuff for experts in this case and not for Mr. Hays, who hasn't had a chance to look at the information.
Furthermore, inventor testimony on the claims, as Your Honor has ruled, is not relevant, and that's exactly what he's trying to elicit.
THE COURT: I'll sustain that objection. I think we've gone across the line, Mr. Selinger.
MR. SELINGER: May I respond briefly, Your Honor?
THE COURT: No. I've ruled on it. You can ask your next question.
MR. SELINGER: Thank you.
Q (By Mr. Selinger) An email and an attachment and a link to request the attachment, in your opinion, had nothing to do with

what you understood you had disclosed in the '946 patent?

MR. SCARDINO: Your Honor, may I approach, please? I object, and I don't want to --

THE COURT: Approach the bench.

MR. SCARDINO: Thank you.

(Bench conference.)

MR. SCARDINO: I've got some cases. Can I -- Your Honor, Howmedica, the Federal Circuit in Howmedica.

THE COURT: State your objection, Counsel.

MR. SCARDINO: Your Honor, my objection is this question calls for improper expert testimony with respect to the accused system and the accused apparatus in this case, which relates to emails and email attachments. And he's asking him if the patent covers that accused implementation.

THE COURT: Response?

MR. SELINGER: That's not what I'm doing. I'm asking him for his understanding of what it was he'd invented. The -- this goes to my written description defense where the difference between the claim, as Your Honor has construed it, and what the inventor -- inventors regarded as their invention, what they disclosed is a basis for invalidating the patent.

The case I have, Gentry Gallery, the Federal Circuit relied on inventor testimony to hold the patent invalid under written description.

And I'm not asking him what -- what his claims cover.

I'm asking what he -- he understood he invented. If the claims are different than that, then that goes to written description and validity.

MR. SCARDINO: May I respond, Your Honor?

THE COURT: You may.

MR. SCARDINO: Your Honor, that is absolutely not what he's doing. The claims don't say anything about emails, anything about attachments. If he was trying to compare the written description to the claims, he'd be asking him about claim language and where that claim language is in the description. This is nothing more than a question about the accused implementation and infringement.

THE COURT: And you've already made the point, Mr. Selinger, that the word "email" is not in the patent.

MR. SELINGER: Well, he didn't -- except he wouldn't answer me.

THE COURT: Well, he's being very evasive. And I'm -- I'm about as frustrated with the situation as I can remember being in a long time.

You may certainly ask him what he invented, but you cannot ask him to -- to interpret or define the claims in the patent. You're going to have to ask him conceptually, topically, what his patent covers.

But if you get into specific questions about the meaning of the claim language, I'm -- I'm going to stop you

because that's not proper with -- with an inventor, non-expert.

MR. SELINGER: And I -- I apologize if I did, Your Honor, but the -- the words I had in -- in the claim -- in my question were about "email" and "download link" which aren't in the claim.

So that's exactly what I was trying to do.

THE COURT: Well, I'm going to sustain the objection as to this question.

Mr. Selinger, go to the podium and ask your next question. You are permitted to inquire from the witness his understanding of what he invented. You are not entitled to ask him to compare or comment or opine about the meaning of the claims themselves.

MR. SELINGER: And -- and that was not my intent.

May I ask one more question?

THE COURT: Yes, sir.

MR. SELINGER: I have his prior testimony on -- on some of these, and could I just ask him if he said that?

MR. SCARDINO: Your Honor, I'm sorry. May I respond?

THE COURT: Well, I don't know what this prior testimony is. I mean --

MR. SELINGER: Deposition testimony.

THE COURT: You can certainly attempt to impeach him with his prior deposition testimony.

MR. SCARDINO: Your Honor, may I make one comment to

that?

This is the very testimony that they designated for -- to play for depositions if Mr. Hays wasn't called live. We had objections to these deposition clips that he's going to use for impeachment because they're improper in front of the jury coming from an inventor.

They're more prejudicial than probative because the Federal Circuit has said that questions from the inventor about claim scope, meaning of the claims, comparing the claims to the accused apparatus is improper and irrelevant in front of the jury.

The Howmedica case --

THE COURT: Well, if the questions that he asked do not inquire as to claim scope, then there shouldn't be any basis to impeach him with deposition testimony about claim scope.

MR. SCARDINO: Understood, Your Honor.

THE COURT: All right.

MR. SELINGER: Thank you.

MR. SCARDINO: Let's proceed.

(Bench conference concluded.)

THE COURT: Let's proceed, Counsel.

Q (By Mr. Selinger) Mr. Hays, you agree that the process for displaying errors and messages on the display unit is not described in the '946 patent, correct?

A I can't recall if it's disclosed in that or not.
Q Do you recall having your deposition taken in March of 2014?
A Yes, I believe you were there.
Q No. That was someone else.
A Oh, someone else. Okay.
Q Do you recall --
THE COURT: All right, gentlemen. This is exactly what I've tried to talk to both of you about. He asked you if you recall that your deposition was taken. Yes.
And this exchange about, I was there; no, it was somebody else, that's way beyond what was asked for. You both need to limit your questions and answers to the specific topic and not go beyond what's been presented.
I don't know how to be any clearer. If I need to find a better way to get your attention, I'll find a better way. But I mean what I say when I want answers limited to questions asked.
Let's proceed.
MR. SELINGER: Mr. Lodge, can we have DTX-1, PDF 7?
Q (By Mr. Selinger) Mr. Hays, this is Figure 6 from the '946 patent.
Do you recognize it?
A Yes.
Q And do you see that there is one mobile unit, 624?

A Yes.
Q And -- and do you see that there's a Network Operation Center, 600, in the lower left-hand corner?
A Yes.
Q And there's a satellite, 606, in the upper right-hand corner -- left-hand corner?
A Yes.
Q And you see there are some base transmitters?
A Yes.
Q And there are some base receivers?
A Yes.
Q And there are two regional stations?
A Yes.
Q There's no email server, correct?
A That's not correct.
Q And this figure, do you see the words -- do you see a block for email server?
A I don't see a block that says email server, no.
MR. SELINGER: May I have one minute, Your Honor?
THE COURT: You may.
(Pause in proceedings.)
MR. SELINGER: Pass the witness, Your Honor.
THE COURT: Redirect?
MR. SCARDINO: Yes, Your Honor, briefly.
THE COURT: Proceed.

REDIRECT EXAMINATION

BY MR. SCARDINO:

Q Mr. Hays, you were asked about this --

MR. SCARDINO: I'm going to go to the document cam.

Q (By Mr. Scardino) The SkyTel high-level description and the -- and the dates in there.

A Yes.

Q Do you recall that?

A Yes.

Q And it says, date, 1999, on the front?

A Yes. Yes.

Q It also says on each page of the first part -- I think you were talking about the second part during your cross-examination, but what does it say at the bottom of each page of the first part where the copyright notice appears?

A MTel Technologies, Incorporated, 1997.

Q That slipped a little bit, but you can still see it.

So when did that indicate to you this information was created?

A The copyright was 1997, so it would be 1997.

Q I'm going to look at the table of contents. You were also asked about this table of contents and Section 2, the NOC. Can you read for us what is under Section 2.1?

A Under 2.1, it's 2.1.1, which is the personal messaging unit, PMU.

Q What is that?
A That's the pager, essentially. That's -- that's the mobile device that the subscriber would carry.
Q So did you use different terms like "PMU mobile device," "mobile unit," and "pager" when you were at SkyTel?
A We used different terminology, but PMU was the one that was -- would encompass all of that, yeah.
Q Okay. What about "mobile unit"? Was that a term you used?
A "PMU" is the term we used, so...
Q At SkyTel?
A Yes.
Q Okay. Do you recall you were asked questions about the '946 patent and the error correction embodiment?
A Yes.
Q Okay. Do you recall whether there's another embodiment in the patent that talks about where I've highlighted here, "partially received messages"?
MR. SELINGER: Objection --
A Yes.
MR. SELINGER: -- leading, Your Honor.
THE COURT: Sustained.
Q (By Mr. Scardino) Mr. Hays, what do you see here in Column 15, Lines 5 -- I'm sorry -- Line 20? What is the patent discussing there?

A If the message W -- WAI was only -- if the message was only partially received, the negative acknowledge signal --
Q I'm sorry --
A -- indicates --
MR. SELINGER: Could I have him finish his answer?
MR. SCARDINO: Yeah. I just put it back up there.
MR. SELINGER: Sorry.
A -- indicates that the Network Operatives -- Operation Center should be -- should rebroadcast the message to the mobile unit.
Q (By Mr. Scardino) So this is talking about messages that are only partially received?
A That's what it's talk -- yes.
Q And let's look at another part of the patent which I've highlighted there. Can you read that highlighted part?
A If the mobile unit 624 does not completely receive the message --
Q Okay. You can stop there. And then just the last one that I've highlighted there. Can you read that, please?
A The message has not been completely or properly received.
Q Okay. So you said that your patent was focused on -- one of the focuses was on error correction techniques using the retransmission button during your cross-examination.
A Yes.
Q As you've seen here, was your patent also focused on a

situation where messages were only partially received?

MR. SELINGER: Objection; leading, Your Honor.

THE COURT: Sustained.

Q (By Mr. Scardino) Did your patent have another scenario?

A Well, the other scenario is when the messages were only partially received, yeah.

Q Okay. Now, let's look at the Figure 6. And Counsel for HTC was discussing Figure 6 with you. Did I hear you correctly, did you disagree with him about the email server question?

A I disagreed because it shows a Network Operation Center, which we've always felt was a collection of servers for the network. And this would be the logical extension of the Network Operation Center to say it has an email server.

Q And so could you do -- send emails in the SkyTel network?

A Yes.

Q And would those emails go through those servers in the Network Operation Center?

A Yes.

Q Thank you, Mr. Hays.

MR. SCARDINO: No more questions, Your Honor.

THE COURT: You pass the witness?

MR. SCARDINO: Pass the witness, Your Honor.

THE COURT: Additional cross, Mr. Selinger?

MR. SELINGER: No, Your Honor.

THE COURT: You may step down, Mr. Hays.

THE WITNESS: Thank you. You want to collect all these books here?

THE COURT: Just leave them there, please, sir.

Plaintiff, call your next witness.

MR. DACUS: Your Honor, we call Andrew Fitton.

THE COURT: If you'll take the stand, Mr. Fitton.

Okay. Counsel, proceed.

MR. DACUS: Thank you, Your Honor.

ANDREW FITTON, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. DACUS:

Q Mr. Fitton, would you introduce yourself to the jury by telling them your name, please, sir?

A My name is Andrew Fitton.

Q Okay. And, Mr. Fitton, are you married?

A I am married to a long-suffering wife of 35 years called Ros.

Q And do you have children?

A I have four children from ages 29 down to 24, I think.

Q And where do you live?

A I live in Austin, Texas.

Q Okay. And tell the jury -- they've probably figured out by now, you didn't grow up in Austin. Where did you grow up?

A No. I -- I obviously wasn't born in Austin, Texas. I was

born in the north of England, and I've lived most of my life in -- between London and spending about a third of the year in the USA.

Q And tell the jury, if you would, please, sir, what is your role at MTel?

A I'm the chairman and chief executive of United Wireless, Inc. -- United Wireless Holdings, Inc., which is the parent company of MTel, and MTel is the Plaintiff in this case.

Q Does that mean that United Wireless owns MTel?

A Yeah. United Wireless is the hundred percent owner of MTel.

Q Okay. And where are United Wireless and MTel based or located?

A United Wireless has its headquarters in Austin, Texas, in a building called 515 Congress, and MTel has its office in Lewisville, Texas.

Q Tell the jury, if you would, sir, briefly what your educational background is.

A I was educated at a -- what we call a grammar school in the UK up to the age of 18, and then I then went on to university to study economics and accountancy.

Q Did you get a degree from the university?

A No. I -- once I was at the university, I purchased an interest in a business, and I left the university after two years to go and run that business.

Q So would you tell the jury briefly how you got started in the working world?
A Well, I -- I think I was in the working world when I was quite -- when I was in my teenage years, actually. My father died when I was very young, so I was -- we didn't have a lot of money, and so everybody went out to work. And I pretty quickly gained an interest in business.

And in 1981, I think it was -- 1980, I -- I was at university, and I got the opportunity to purchase an auto repair business which was about to go into bankruptcy. And I purchased a 50 percent share in that business and went to run that.
Q Would you tell the jury briefly, sir, what you've done in your professional career from a business standpoint, walking us forward from the auto repair shop that you owned?
A Well, I studied the auto repair shop for about two years, and I continued on for about two years after that. And then actually sold it to the guys who -- who ran it for me day-to-day. And subsequent to that, I became very interested in companies that had -- were in financial difficulty or were in need of restructuring.

And in the 1980s, I joined a computer company, mainframe computer company, and I joined originally as assistant to the managing director and a couple of years later became the managing director of the company. And that company was called

Mega Leasing. It was one of the biggest mainframe leasing companies in the UK at the time.

While I was there, I started a business as well called Datacom, which was a data communications business. And then in 1987, I left there and became chief executive of a general -- of an industrial services company. Subsequently became chairman of a medical services company.

And then in the late '90s, returned to the data communications market by purchasing a business that was involved in the tracking of vehicles and the monitoring of parking meters and things like that. And that took me back really into the data communications field.

Q Tell the jury whether or not you have any experience in your professional life in the wireless data communications area.

A Well, having been in the wire -- wireline data communications area, what I realized in the late 1990s was that there was going to be a big shift toward wireless data.

When I started in business, there were no mobile -- no mobile phones, so pretty shortly afterwards, we ended up with those very large mobile phones that we all remember really didn't do very much. Many could connect; many couldn't connect and only -- only lasted a few hours before the battery ran out anyway.

And -- but nobody was transmitting any data. And what had

happened in the -- in the wireline, in the world of computers linked by wires, was that it really all became about how you communicate, how you send the data between devices.

And so once we had mobile networks, it became obvious that you would try and do the same over wireless networks. But sending data over wireless networks, that was pretty -- at that point in time was very novel. And there were probably only two or three technologies in the world that could send tech -- data over wireless networks.

And so in 2000, my company purchased a network called -- which became known as Transcom from BellSouth, the -- now -- now AT&T. And that network was -- covered the whole of the UK and transmitted data for people like UPS and FedEx and people like Parkeon who were monitoring parking meters and people sending messages. We had handheld devices, similar to the early -- we had devices similar to the early Blackberries running on that network as well.

Q Did that network have a name?

A It was originally called RAM Mobile Data, but we changed its name to Transcom. And it was later purchased by British Telecom, which is the AT&T of the UK.

Q Tell the jury when it is that you formed the United Wireless company and why --

A Well, the -- the technology, the particular technology that we were using in the UK was a technology called Mobitex.

And that was a technology by Ericsson of Sweden. And Ericsson was one of the biggest telecommunications -- infrastructures in the world.

And they had built a number of networks or they supplied the equipment for a number of networks to be built around the world using this technology, I think in total about 33 networks, the largest of which was actually in the U.S., unsurprisingly.

It was a national network, and it was called RAM Mobile Data, too. And subsequently, it would be renamed Velocita. Now, that network was owned by BellSouth.

THE COURT: Mr. Fitton, when did you form United Wireless Company? That was the question.

A 2007.

THE COURT: I'm going to say the same thing I said to the prior witness. Try to limit your answers to the questions asked, okay?

THE WITNESS: Yes, Your Honor.

Q (By Mr. Dacus) And did you form United Wireless in 2007 for a specific purpose?

A We formed it to Velocita Wireless from Sprint.

Q And what was Velocita Wireless at a high level?

A It was the U.S. national wireless data network using the Mobitex technology.

Q Did United Wireless ever purchase another wireless data

communications network other than the Velocita purchase?
A In 2008, we purchased the SkyTel network.
Q And from whom did you buy the SkyTel network?
A From a company called Bell Industries.
Q And can you tell the jury generally why you bought the SkyTel network, why United Wireless bought it?
A We were interested in the network because it was the premier national paging network, but it was capable of being used for other functions. And we were interested in doing machine-to-machine communications over that network.
Q Is the SkyTel network that United Wireless purchased the same SkyTel network that was owned by MTel back in the early and mid '90s?
A I think by this time, it was even bigger.
Q But it was the same; is that correct?
A It is the same.
Q Now, did -- when you purchased the Sky -- when United Wireless purchased the SkyTel assets, what did it purchase?
A We purchased everything, the base stations, the customers, the payables, the desks, the chairs, everything that was included in running the business, including the patents and some trademarks. And we -- we also assumed some liabilities.
Q The '946 patent that is at issue here, was that part of United Wireless's purchase of the SkyTel assets?
A It was.

Q At that -- at the time of United Wireless's purchase the SkyTel assets, who were SkyTel's largest customers?
A The largest customer was the U.S. Government, and then there were many other customers, many other major corporations, such as Coca-Cola, Disney, General Electric, but the largest was certainly the government.
Q When you purchased the SkyTel assets, did you purchase it specifically for the patents?
A No. We -- we purchased it because we thought it was an interesting business.
Q And what -- what were your plans for that business?
A Our original plan was actually to integrate our Mobitex network with the SkyTel network and create one very large national machine-to-machine network.
Q When you bought the SkyTel assets in 2008, what was the state of the wireless communications industry from your experience and perspective?
A It was a point of explosion, which had been predicted, though I don't think anybody thought it was going to happen quite as quickly as it happened. But we went from people transmitting relatively small amounts of data to wanting to transmit large amounts of data literally overnight. It's what some people called the data crunch or data explosion.
Q Is the SkyTel network still operational today?
A It is.

Q And who operates it?
A It's operated by American Messaging in Lewisville, Texas.
Q Now, when you purchased -- I keep saying "you." I mean, United Wireless purchased the SkyTel assets, did you or anyone at United Wireless know that the patents were valuable?
A No.
Q And -- and you are here in this courtroom telling this jury that they're valuable, correct?
A Yes. Yes.
Q Why is it that you say now they're valuable, but at the time that you bought, you didn't know they were valuable?
A Intellectual property always have a value, particularly in a technical environment, but you don't necessarily know exactly what value it has at any point in time until such time as it's needed.
Q When you bought the SkyTel assets, did you know that HTC was going to infringe on the '946 patent?
A No.
Q When -- when you bought -- when United Wireless bought the SkyTel assets, did you know that other phone manufacturers were going to use the '946 patent and want a license to it?
A No.
Q And remind the jury, from whom did you buy the SkyTel assets?
A A company called Bell Industries.

Q And to your knowledge, did Bell Industries, when it sold the patents, know that HTC and other phone manufacturers were going to use the '946 patent in the future?
A As far as I'm aware, they had no knowledge.
Q Now, in your experience in wireless data communications, is capacity an issue within the network?
A Capacity is probably the No. 1 or No. 2 issue in running any network.
Q And -- and why so?
A As -- as it's been described before, bandwidth is -- is limited. People like to think that it's unlimited, and perhaps we get confused by the fact that cellular operators offer unlimited data plans, but the truth is there's only so much up there in the sky.

And what's more important is, when you're granted a license, the pipe that you're given is the limitation on -- on your bandwidth. And once that becomes full, you have real issues.
Q Why did you choose the name MTel for the company that now owns these patents?
A Because it was a -- a good name, a trade name -- or it's a bit like a patent in some ways. We all like great trade names, you know. And what part -- when we acquired the assets from Bell Industries, we acquired a number of trademarks and domain names, including SkyTel and -- and including the right to use

the MTel name.

And as a further point, it was a good name for a company. People recognized it within the industry. And it paid some sort of respect to the guys who'd started what was a very important company back in the 1980s and '90s.

MR. DACUS: Mr. Gros, can you pull up Exhibit PX-16, please? And can you go to the fourth page?

Yes, sir. Let me backtrack a bit. Would you stay on the first page just for a second?

Q (By Mr. Dacus) You have PX-16 in front of you, Mr. Fitton. Can you tell the jury what they're seeing in PX-16?

A This is the assignment of patents that was signed in June of 2008 when we acquired the assets from Bell Industries -- the SkyTel assets from Bell Industries. And as you can see there, they were acquired initially by a company called Velocita Wireless, LLC, which was a network company.

Q And was Velocita Wireless owned by United Wireless?

A It was, 100 percent.

MR. DACUS: And can we go to Page 4, please, Mr. Gros?

Q (By Mr. Dacus) And will you tell the jury on this Page 4 of PX-16 whether or not you see the '946 patent and -- on this page?

A It's at Line -- it's at No. 22, Patent 5,754,946.

Q So was it your understanding, as a result of this

transaction that, the '946 patent had been transferred to Velocita Wireless?
A It was.
Q Okay. And then was the '946 patent transferred to other companies under the United Wireless umbrella of companies?
A It was.
Q And ultimately, was it transferred to a company with the name of MTel, LLC?
A It was.
Q And that's the Plaintiff in this lawsuit; is that correct?
A It is.
MR. DACUS: We can take that down, Mr. Gros. Thank you.
Q (By Mr. Dacus) Mr. Fitton, do any other companies have the rights to use the '946 patent?
A A number of companies, yes.
Q Okay. And how did they acquire those rights?
A They entered into license agreements with MTel.
Q And so that the jury understands, what's -- what's your understanding of what a license is?
A A license is a right to use the technology for a -- for a period of time.
Q And did those companies that -- that you've told them have a right to use the '946, did they pay for that right or license?

A Yeah, they did.
Q Okay. Does Apple have a license to the '946 patent?
A It does.
Q Does LG, the phone manufacturer, have a license?
A It does.
Q Does Samsung have a license?
A It does.
Q Does AT&T have a license?
A Yes.
Q Does T-Mobile have a license?
A Yes.
Q And did each one of those pay for the right to the use of the '946 patent?
A They did.
MR. DACUS: Your Honor, may we approach?
THE COURT: You may.
(Bench conference.)
MR. DACUS: I'm at the end of my examination, Your Honor, but at this point, I was going to elicit the amounts of those licenses which would require us to clear the courtroom. So I just wanted guidance from the Court.
THE COURT: Is that -- is that all the direct you have with this witness?
MR. DACUS: Yes, sir.
THE COURT: What do you expect your cross to be?

MR. GILLAM: Oh, I expect to be, you know, 20, 30 minutes or so.

THE COURT: Okay. Do you have any cross directly related to the confidential information that you can go into --

MR. GILLAM: Yes, sir.

THE COURT: -- that you could go into at the beginning, and we could leave the courtroom sealed, rather than resealing it later?

MR. GILLAM: Right. I can go into -- the confidential information that I would deal with would be -- actually, I was going to deal with it at the end, but should the Court want me to do it at the beginning, I could do it at the beginning just to make sure we -- you know, there's some --

THE COURT: Well, if you could do it at the beginning, then I could seal the courtroom, he could finish, pass the witness, you could do that, and then we could unseal it. And at that point, probably break for the day.

MR. GILLAM: All right. So we're up here. As long as we're going to do this, I want to be able to also talk about the fact that those were through litigation.

You know, he's -- he's implied -- and we've already talked about this as well, but the -- those -- those licenses were not asked for or requested by these companies, and they were only as a result of litigation.

THE COURT: We've talked about the fact there's no

MIL order on the litigation issue.

MR. DACUS: I agree.

THE COURT: These are the ones that are going to say "Settlement Agreement" at the top, aren't they?

MR. DACUS: Yes, Your Honor.

MR. GILLAM: They are.

THE COURT: All right. Do you see a problem, Mr. Dacus?

MR. DACUS: No, Your Honor, not evidentiary -- from an evidentiary standpoint, no, Your Honor.

THE COURT: I don't either.

MR. GILLAM: Okay.

THE COURT: All right. Let's proceed on that basis.

MR. DACUS: Is the Court going to seal the courtroom?

THE COURT: If you'll ask.

(Bench conference concluded.)

MR. DACUS: Your Honor, at this point, we're going to -- Mr. Fitton is going to be testifying about some financial information that has been designated in this case as confidential, attorney's eyes only, and we would request that the Court seal the courtroom.

THE COURT: All right. At the request of counsel, I'm going to order the courtroom sealed.

Those of you present in the courtroom and not subject to the existing protective order in this case should exit the

courtroom and remain outside until the courtroom is unsealed. If you're not subject to the protective order in this case, you should excuse yourselves from the courtroom at this time.

Since I don't see anybody getting up, I'll assume everybody I'm looking at is subject to the protective order. The Court finds that the courtroom has been sealed.

(Courtroom sealed, in separate volume, Page 3, Line 3 through Page 16, Line 25.)

(Courtroom unsealed.)

THE COURT: Now, it's approximately ten minutes after 6:00 p.m. I'm not going to hold the jury any later today. We're going to recess for the evening.

Mr. Gillam, you may continue your cross-examination of Mr. Fitton tomorrow when we reconvene.

Ladies and gentlemen of the jury, I'm going to ask you to leave your notebooks on the table in the jury room as you leave for the day.

I want to remind you again that tonight when you get home it's going to be a tempting time for somebody to ask you what happened today. Don't try to answer that question. Don't discuss or communicate about what's happened in regard to this case and your service as jurors in any way, whatsoever. That's vitally important, and I remind you of it.

I also remind you to follow all my other instructions. I'm going to ask you to travel home safely. And

I'm going to ask you to be back in the morning assembled in the jury and ready to start again in the morning at 8:30.

With those instructions, ladies and gentlemen, you're excused for the evening.

COURT SECURITY OFFICER: All rise for the jury.

(Jury out.)

THE COURT: Mr. Fitton, you may step down.

Counsel, be seated.

Counsel for both parties, I am directing you to advise each and every other witness you intend to call during this trial that they are to limit their answers to the questions that are asked, that they are to be responsive to the questions asked, but they are not to exceed the scope of the questions asked, and they are not to be nonresponsive.

And if I have the same kind of problems with witnesses going forward that we've had today, principally with Mr. Hays, I'm going to hold each of you and your clients responsible. I want no more of this way beyond the scope of the questions that I tried to reign in today.

Also, I don't want any more sidebar comments in front of the jury.

Mr. Scardino, you've been the worst offender of that. You are not here to tell the jury the next topic that you intend to go into with the witness. You are here to ask the witness questions and hear their responses and ask your

following questions.

But statements peppered amongst your examination about, I'd now like to discuss this, or we'll next talk about this, or anything of that nature are complete sidebar comments directed not to the witness but to the jury intended to communicate directly between counsel and the jury, and they're not permissible. And I don't want to hear those from anybody going forward through the rest of this trial.

Now, there are still outstanding disputes between the parties with regard to deposition clip designations that we've only partially covered during an earlier recess today. We're going to recess for the day, but I want -- in about five minutes, I want to see counsel in chambers, and we'll endeavor to get through the rest of those so that we can start tomorrow without those on the table.

Any other questions before we recess for the day?

MR. DACUS: Not from Plaintiff, Your Honor.

MR. GILLAM: No, Your Honor, not from the Defendant.

THE COURT: I'll remind both parties that before I bring the jury in, in the morning, I will request each side to read into the record the items from the list of pre-admitted exhibits used during today's portion of the trial. Both sides need to be prepared to do that by 8:30 in the morning.

All right. With that understanding, we stand in recess until tomorrow.

COURT SECURITY OFFICER: All rise.

(Court adjourned.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/Shelly Holmes_____ 9/19/16
SHELLY HOLMES, CSR, TCRR Date
Official Court Reporter
State of Texas No. 7804
Expiration Date: 12/31/16